







[ENTERED AT STATIONERS' HALL].

# LEGAL FORMS

FOR

COMMON USE,

BEING 300 PRECEDENTS,

WITH INTRODUCTIONS AND NOTES,

ARRANGED UNDER THE FOLLOWING HEADS:—

- |                                    |                                       |
|------------------------------------|---------------------------------------|
| I. NEGOTIABLE INSTRUMENTS.         | VII. ARBITRATION.                     |
| II. SECURITIES.                    | VIII. COUNTY COURT FORMS.             |
| III. RECEIPTS AND ACKNOWLEDGMENTS. | IX. CONVEYANCES.                      |
| IV. PARTNERSHIP.                   | X. MARRIAGE ARTICLES AND SETTLEMENTS. |
| V. MASTER AND SERVANT.             | XI. WILLS.                            |
| VI. LANDLORD AND TENANT.           | XII. MISCELLANEOUS FORMS.             |

WITH

A CHAPTER ON STAMPS.

BY

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"PARTNERSHIP," "HUSBAND AND WIFE," "MASTER AND SERVANT,"  
"JOINT-STOCK COMPANIES," "BANKER AND CUSTOMER,"  
AND "PUBLIC MEETINGS."

TWELFTH THOUSAND.

*New and Re-written Edition.*

LONDON:

EFFINGHAM WILSON AND CO.

ROYAL EXCHANGE.

1893.



• PRINTED BY ADLARD AND SON,  
BARTHOLOMEW CLOSE, E.C., AND 20, HANOVER SQUARE, E.C.

## PREFACE TO THE PRESENT (THE SEVENTH) EDITION.

The scope and object of this book are explained in the extract, which follows, from the preface to the second edition.

Recent legislation, parliamentary and judicial, has necessitated the re-writing of the greater part of the work. Forms previously used have had to be modified and new ones have had to be inserted while some clauses have been curtailed and others omitted in pursuance of statutes passed since the last edition. The number of precedents is increased from 250 to 300. The introductions to the several groups, or classes, of precedents have been made fuller and more explanatory.

In the introductions and notes, technical language has seldom been used without explanation: the entire disuse of such language would involve too much periphrasis and confusion. In some places, indeed, there may seem to be a superfluity of explanation and direction; but, having noticed the many blunders made even by intelligent persons in filling up printed forms I have given plentiful instructions as to those most likely to be often used.

For the length of time this book has been out of print an apology is due to the many persons who have demanded a new edition of me; but the reason of the delay has been that other legal tasks have intervened to need my attention.

I owe my thanks to my learned friend Mr. Percy Truman, LL.B.Lond., Registrar of Bingham County Court, Nottingham, who has kindly looked through the

proofs of Classes II and VIII and would have done more if I had been willing to burden him further.

JAMES WALTER SMITH.

EXTRACT FROM PREFACE TO SECOND  
EDITION.

Both to lawyer and non-lawyer this book is intended to be useful.

When a lawyer desires to confer rights and impose obligations by an instrument in writing, he is in the habit of selecting his forms from large and expensive volumes, each of which usually relates only to one subject. These works contain forms often of inordinate length, utterly unintelligible to the client and burdensome to his pocket in proportion to their verbosity; and, while they bring a direct profit, they are indirectly injurious to the lawyer. These forms are seldom accompanied by those explanations of their principles and objects which enable the reader to apply them to different circumstances, and to understand their effects; such explanations being only obtainable by searching through the work at large. Often, moreover, these works entirely omit any suggestions or precedents for carrying out many of the commonest transactions of life; which we accordingly find badly done. Common things are important from their frequency, whether difficult or not.

In this little book, therefore, there are prepared for the lawyer several precedents, few of which will be found elsewhere, relating to matters differing widely both in kind and in difficulty, arranged under distinctive heads, and accompanied by observations and notes which even to the more learned will be useful as memoranda.

Next, as regards the non-lawyer. Of the inhabitants of England, only about one person in two thousand is possessed of a knowledge of the law. The people in general are both uninstructed in the rights and duties created by the law, and unskilled in the art of using words so as to create for themselves precisely the interests and liabilities which it is their intention to confer and impose. Often, however, they act for themselves from choice, as if they had the knowledge and the skill; and sometimes they are obliged by necessity so to act, notwithstanding the conscious want of such knowledge and skill. If a man desires to take a house, to give a guarantie, to engage a governess, or to authorise a friend to act in his absence, he seldom avails himself of legal advice,—though, in these matters, legal advice is very important,—but either draws what he conceives to be the proper instrument for himself, or blindly signs the one tendered to him by the party with whom he contracts. Again, a man may be so situated as regards time, place, or health, that, however conscious he may be of his own helplessness, he is virtually compelled to execute an instrument framed by himself, or by friends who are ignorant, or interested.

Now, whether a person acts for himself from choice, or from necessity, it is equally desirable that he should have some means of acquiring such knowledge as may enable him to effectuate his intention without leading him into difficulties, or may, at least indicate to him those questions on which help should be sought. For the most intelligent, the most educated man, who seeks to bind himself or another by a written instrument without a knowledge of the law on the subject, is as it were, an active and well-furnished traveller walking by night through a country full of pit-falls.

These means, which have hitherto been wanting to all but the lawyer, will in some measure be supplied to the non-lawyer by this book. In making use of it, he will bear in mind that the task before him is to ascertain :—

- (1) What he wants; that is what are the rights he

would acquire or preserve, or the liabilities which he would suffer or acknowledge :—

(2) What would be his condition before the law if he were to enter into the proposed arrangement in the simplest form ; *i. e.*, without any writing, if that were possible, or by writing in the simplest form :

(3) What, therefore, will be the *special* conditions and stipulations with which he must surround himself :

(4) The *mode* by which adequate legal expression is to be given to the transaction together with such special conditions and stipulations :

‘(5) Whether any and what *formalities* are necessary or desirable, namely, such as concern execution, attestation, stamping, registration, &c.

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- 7, lines 7 and 8, for *3rd* read *4th*, and for *7th* read
- 26, line 2 from foot, *bond* should be *land*.
- 27, line 7 of section 6, delete from "This is so" to end of paragraph.
- 30, line 17 from top, *warrant* should be *covenant*.
- 42, after form XI, after *No* insert *conditional*.
- 43, heading to form XV, *Transference* should be *Transference*.
- 54, line 11 of form XXIX, after "them" insert "their assigns."
- 62, line 2 from top, *cases* should be *causes*.
- 110, line 5 from top, *unless* should be *useless*.
- 124, line 7 of section 18, *lay* should be *levy*.
- 148, line 15 of section 7, after *property* insert *or property*.
- 150, line 4 of section 12, *were* should be *are*.
- 182, 1st line after form XXV, after "County Court" insert "Rules."
- 195, 3rd line from foot, *time-section* should be *limitation*.
- 200, line 8, *preclosure* should be *foreclosure*.
- 212, line 4 of section 2, after "separate property" insert "all property."
- 229, line 12 of section 25, after "thereto" insert "to"
- 229, line 20 of section 25, *made* should be *male*.
- 233, line 6 of section 2, delete "a."
- 233, line 7 of section 2, after "to" insert "as."
- 234, lines 14 and 16, *attained* should be *attainted*.
- 237, in heading of section 9, *revised* should be *revived*.
- 239, line 15 of section 11, *great event* should be *given event*.
- 247, line 9 from top, *may* should be *must*.
- 276, in heading to form XIII, OR should be OF.
- 293, under head EXEMPTIONS, *of the Bank* should be *at the Bank*.
- 297, at top, delete "Appendix."
- 299, *Lease or Tail* should be *Lease or Tack*.

Whilst this Work is in the Press a Bill has been presented to Parliament dealing with Bills of Sale. It has passed the House of Lords (March, 1893), and awaits consideration by the Commons. As it is a Consolidation Bill, and merely codifies the existing Law, the present remarks on Bills of Sale may be taken as still accurate, provided that the Bill does not undergo alterations, which are unlikely to occur.





## CLASS I.—NEGOTIABLE INSTRUMENTS.\*

[B. E. A. *stands for the Bills of Exchange Act, 1882.*]

1. Negotiable instruments are for the most part either bills of exchange (a term which in legal language includes cheques) or promissory notes. Bills of lading are also negotiable instruments.

2. A bill of exchange is an unconditional written order by which one man is directed by another to pay a sum of money to him or to some other person. The person giving the order, and whose name appears at its foot, is called the *drawer*; the person to whom it is addressed, that is on whom it is drawn, is called the *drawee*; and afterwards, when he has acknowledged the right of the drawer to make such an order, by accepting the draft, he is called the *acceptor*. This acceptance is effected by writing the word *Accepted* across the draft followed by the acceptor's signature; but the signature alone is sufficient. The person to whom the money is to be paid, whether that person is the drawer, or some other person named by him, is called the *payee*. When the payee, or any other person, writes his name on the back of the bill, he is said to *indorse* it, and is called an *indorser*.

3. A bill may be addressed to two or more drawees, whether they are partners or not; but must not be addressed to two in the alternative, or to two or more in succession. It may be made payable to two or more payees jointly, or to any one of two or more, or to the holder of an office for the time being.

A bill may be drawn payable to bearer; but it is not usual or convenient to do so. If the words are *pay bearer* or *pay A. B. or bearer*, it is payable to bearer and

\* What follows on the subject of Bills, Notes, and Cheques relates only to the *forms* of those instruments. The general law concerning them will be found at length in my Book on Bills, Cheques, Notes, and I. O. U.'s, published by Effingham Wilson and Co.

## CLASS I.

is transferred by delivery without indorsement, but may of course be indorsed.

A bill may be drawn payable *to A. B.*, or *to A. B. or order*, or *to the order of A. B.* All these three forms have the same effect and, in the first as well as in the others, the bill is transferred by A. B.'s indorsement followed by delivery.

If the words are *pay to A. B. (not transferable)*, or indicate an intention that the bill should not be transferable, it is valid between the parties but is not negotiable.

A bill may be drawn payable *to A. B. and C. D.* or *to them or order*, and passes, in either case, by the indorsement of both. And it may be drawn payable *to A. B. or C. D.*, with or without *or order*, and will then pass with the indorsement of either.

A bill may be drawn payable to the drawer with or without *or order (to me, or to me or my order)*, which is a mode frequently used, or to the drawee, with or without *or order (to yourself, or to yourself or order)*, which is uncommon. When the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

When the drawer and drawee are the same person, *i. e.* where a man draws on himself, or where the drawee is a fictitious person, or a person without capacity to contract, the holder may treat the instrument at his option either as a bill or as a promissory note.

4. When the bill is drawn payable to the drawer (*to me*), or to the drawer or his order (*to me or my order*), which is a mode commonly used, the drawer himself is the only person to whom it can be paid until he has written his name across the back. When he has done this it makes the bill payable to the bearer, just as if it were so drawn, unless he directs payment to be made to some person in particular. Writing the name in this manner is called *indorsing* the bill, and the drawer then becomes the *indorser*. The person (called the *indorsee*) to whom he gives the bill is then entitled to receive the money, and he may then pass it to another who will, in his turn, be in the same position. The bill is now payable to bearer, so that the person who receives it indorsed by the drawer need not indorse it himself on passing it away; but it is usual to require him to do so, because he thereby becomes liable to the person who takes it, in case of the bill being dishonoured by the drawee refusing to accept or to pay it. I will first give the form of a

## I. BILL PAYABLE TO DRAWER OR HIS ORDER.

*£100 0s. 0d.		Manchester, 15 <sup>th</sup> Oct., 18—
Six months after date,		pay to me or my order
One Hundred Pounds, value	Accepted. Samuel Johnson.	received.
To Dr Samuel Johnson, The Temple, London.		JAMES BOSWELL.

The following is the form of a

## II. BILL PAYABLE TO A THIRD PERSON OR HIS ORDER.

£100 0s. 0d.		Newcastle, 16 <sup>th</sup> Oct., 18—
Six months after date,		pay to Richard Roe or his
order One Hundred Pounds,	Accepted. Jonathan Wild.	value received.
To Mr Jonathan Wild, Old Bailey.	Accepted. Jonathan Wild.	JOHN DOE.

The former of these bills is without indorsement payable only to James Boswell, the drawer and payee, and the latter is, without indorsement, payable only to Richard Roe, the payee; but each on presenting his bill for payment will be expected to indorse it as evidence of identity and in token of discharge.

If the words "or my order" in the former, and the words "or his order" in the latter bill were omitted, the omission would have made no difference; in either case the payee could transfer the property in the bill by indorsing and delivering it. When simply indorsed with the payee's name the bill would be payable to bearer. If in either bill, after the words "pay to" the word "bearer" had been inserted instead of the words which now indicate the payee, the bill would be payable to bearer without indorsement.

5. If James Boswell or Richard Roe, instead of simply writing his name across the back (which is called a simple or blank indorsement), were to write above his name the words "pay A. B." or "pay A. B. or order" (which is called a special indorsement), the further indorsement of A. B. would be required before the bill would be payable to anyone but himself. If A. B. were to write his name only, his would be a simple, or blank, indorsement, and the bill would be payable to bearer.

\* Where the figures showing the amount payable differ from the words, the sum denoted by the words is the amount payable. (B. E. A., s. 9.)

A bill may be indorsed by several persons in succession, and each holder would usually indorse it on giving it for value to another.

6. Any holder of a bill indorsed in blank may turn the only, or, if there are more than one, the last blank indorsement into a special one. This may be useful for either of two purposes. If the holder wishes to place an obstacle in the way of the bill being cashed or negotiated in case he should lose it, he may write over the last blank indorsement the words, "pay C. D." (his own name), so that some one will have to forge his signature before the bill is presented for payment. Or, if the holder wishes to pass the bill, say to E. F., without liability, in case of its dishonour, he may write over the name of the last blank indorser, the words, "pay E. F.," and may thus avoid putting his own name to the instrument. This does not in any way affect the liability of the last indorser. The words "or order" may be omitted, as their absence will not restrict the negotiability of the bill.

But the ordinary way of indorsing a bill where the indorser is merely an agent, or for any other reason wishes to avoid liability, is to write after his name the words *sans recours*, meaning "without recourse to me."

7. A bill may also be specially indorsed *pay A. B. and C. D.* or *pay A. B. or C. D.*, or may be restrictively indorsed *pay D. only*, or *pay D. for the account of X.*, or *pay D. or order for collection*, or by other words prohibiting the further negotiation of the bill, or giving an authority to deal with the bill only as thereby directed.

A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto whom the indorser could have sued, but gives the indorsee no power to transfer his rights as indorsee unless it expressly authorises him to do so. (B. E. A. s. 35.)

8. Acceptance may be either general or qualified. The acceptance given in the above forms is the

### III. SIMPLE GENERAL ACCEPTANCE.

Accepted.

SAMUEL JOHNSON.

The signature across the bill would be sufficient without "accepted."

The effect of this is that the holder of the bill may sue the acceptor when it is due without presenting it to him at all; but, if the holder wishes to preserve his

remedy against the drawer and indorsers, he must present the bill, or get some one to present it for him, on the day when it falls due if a business day, at the acceptor's place of business, if known, or at his residence; if known, or at his last known place of business or residence, and, if none of these are known, to the acceptor personally anywhere.

9. But if the acceptance is as follows :

#### IV. GENERAL ACCEPTANCE PAYABLE AT A PLACE

Accepted.

Payable at the London and Westminster Bank.

SAMUEL JOHNSON.

or

#### V. GENERAL ACCEPTANCE WITH ADDRESS GIVEN.

Accepted.

SAMUEL JOHNSON,

No. 30, Wine-office Court, Fleet Street.

the effect would be the same as regards the liability of the acceptor; but, in order to charge the drawer or indorsers, it would be necessary to prove presentment at the place named.

10. A qualified acceptance is one which "in express terms varies the effect of the bill as drawn"; as where it is conditional, or for part only, or to pay at a particular place *only* or at a different time, or where it is an acceptance by only one of two or more drawees.

The most usual form of qualified acceptance is an

#### VI. ACCEPTANCE PAYABLE AT A PARTICULAR PLACE ONLY.

Accepted.

Payable at the London and Westminster Bank and not elsewhere.\*

SAMUEL JOHNSON.

In this case the bill must have been presented at the place named not only in order to charge the drawer or indorsers, but to charge the acceptor himself.

[But a drawer who is entitled to have his draft accepted is not bound to take any qualified acceptance unless he has agreed to do so, and a holder of an unaccepted draft, if, on his presenting it for acceptance, the acceptance is qualified, may refuse it and may treat the bill as dishonoured, and may sue the drawer and indorsers.]

11. Without giving all the rules as to presentment

\* The words of the Bills of Exchange Act, s. 19, are "there only and not elsewhere."

for payment, I should add, to prevent the foregoing statement being misleading, that the presentment must be at a reasonable hour and that, if there is no one at the proper place of presentment who is prepared to pay the bill, no further presentment is necessary. When the acceptor is dead his personal representative should be sought for, and the bill presented to him or her.

As to the due day, note what follows about days of grace.

The circumstances under which a man is excused from presenting a bill at all, or for delay in presenting it, are stated in the Bills of Exchange Act, s. 46.

12. Bills may also be drawn payable so many days, or *months after sight*, in which case they should be presented for acceptance without delay, and the acceptor should write the date over his acceptance in order to fix the time for the maturity of the bill.

In the case of all bills which are not already accepted the holder should, for his own sake, present them for acceptance as soon as possible; because, if he obtains the acceptance, he has a further security, while if it be refused, the other parties to the bill become immediately liable upon notice of the non-acceptance, which amounts to a dishonour.

The notice should be given or posted promptly (see s. 45, *post.*). And in the case of all bills, the holder may suffer for neglecting to present for acceptance, if he has been cautioned by the drawer to do so.

But in the case of a bill payable a certain time *after sight*, such presentment becomes absolutely necessary, unless the bill is in circulation. Whoever keeps it twenty-four hours must present it for acceptance, if he means to hold the drawer and indorsers liable.

The presentment should be made in the mode already explained in the case of presentment for acceptance. The drawee may keep the bill twenty-four hours to consider whether he will have effects of the drawer in his hands; but if the bill is kept longer, the other parties should have notice in order to make them chargeable. The acceptance, if given, should be dated of the day of presentment. The following may be the form of a

#### VII. BILL PAYABLE AFTER SIGHT.

£100 Os. Od.

*Penzance*, 1st of April, 18—

Ten days after sight pay to A. B., or his order, One Hundred Pounds, value received.

JOHN TREELIVING.

To Mr. C. D., Banker, London.

13. *Days of grace.*—Three days will be added to the term at which all of the above-mentioned bills are nominally payable. They are reckoned inclusive of the first and exclusive of the last day, and “month” means calendar month; thus, if a bill is drawn on the 1st of January, payable in two months, it will not be due till the 3rd day of March, and, if drawn on the 3rd January, not till the 7th March. No presentment for payment before or after the last day, will be valid for charging the drawer and indorsers; but:—

When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal proclamation as a public fast or thanksgiving day, the bill is, except in the cases hereinafter provided for, due and payable on the preceding business day;\* when the last day of grace is a bank holiday (other than Christmas Day or Good Friday) under the Bank Holidays Act, 1871, and Acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a bank holiday, the bill is due and payable on the succeeding business day. (*Bills of Exchange Act*, s. 14.)

14. Bank holidays in England and Ireland are Easter Monday, the Monday in Whitsun week, the 1st Monday in August and the 26th December, if a week day. (*Bank Holidays Act*, 1871), and, if the 26th December is a Sunday, the following day is a bank holiday.

Bank holidays in Scotland are, New Year's Day, Christmas Day (and if either falls on a Sunday, the following Monday), Good Friday, the 1st Monday of May and the 1st Monday of August. (*Bank Holidays Act*, 1871.)

Where the bill is payable at a fixed period *after sight*, the time begins to run from the date of the acceptance, or, if the bill is not accepted, from the date of the noting or protest (if the bill is noted or protested) for non-acceptance or non-delivery. (B. E. A., s. 14.)

Non-delivery means not returning in the proper time a bill left for acceptance.

If you desire to avoid days of grace, insert, after the word *date* or *sight*, the words *without grace*.

15. But there is another kind of bill which needs no acceptance, and which does not admit of days of grace. This is a bill payable “on demand” or “at sight.” This kind of bill is, in general, only used for the purpose of

\* So that, when the last day of grace is Christmas Day and a Monday, the bill must be presented on the Saturday, if a business day; if not on the Friday, i. e. without grace.



drawing on a banker, in which case it is called a draft or cheque.

Sometimes, however, it is given as a security for money lent, or owing, in which case, of course, an acceptance is written across it by the person who is to render himself liable for the money, which acceptance may be in any of the forms given above. In which case presentation and demand may be made at any time in order to charge the acceptor; but must be made within a reasonable time\* in order to charge the drawer and indorsers; for such a bill is not intended as a continuing security, like a promissory note payable in like manner. The following may be the form of a

#### VIII. BILL PAYABLE ON DEMAND OR AT SIGHT.

£100 0s. 0d.

London, 1st Nov., 18—

On demand [*or at sight*], pay to me, or my order [*or to G. H. or his order*], One Hundred Pounds value received.

WILLIAM SHAKESPEARE.

To Mr. Oliver Cromwell, No. 2, Fleet Street.

Bills and promissory notes, payable to bearer on demand for £100 and under, can only be issued by bankers licensed by the Commissioners of Inland Revenue. But a bill drawn payable on demand to A. B. or order, is not a bill which, when issued, is payable to bearer on demand, because it requires indorsement.

16. Bills, notes, and cheques may now be made for any amount, however small, as long as it is "a sum certain in money," and the ordinary forms may be used, whatever the amount.†

17. If a bill, note, or cheque is lost, an action may still be brought upon it, and a judge may order that the loss shall not be set up as a defence provided an

\* Reasonable time is a mixed question of law and fact, to be determined by the nature of the bill, the usage of trade with respect to similar bills, and the circumstances of the particular case.

† Statutes were passed forbidding the uttering or negotiation of bills, promissory notes, and drafts for 20s. or above that sum and less than £5, unless made, drawn, and indorsed in a prescribed form. (17 Geo. III, c. 30, as to England; 8 and 9 Vict., c. 37, as to Ireland; and 8 and 9 Vict., c. 38, as to Scotland.) And statute 48, Geo. III, c. 88 forbade negotiable bills, notes, and cheques for less than 20s. But the two statutes of Geo. III are repealed by the Bills of Exchange Act, and the other two by the 27 Vict., c. 20, and the 26 and 27 Vict., c. 105 respectively. The repeals were for a limited time, but it has been extended to the present by successive Acts for the continuance of expiring laws.

indemnity be given to the satisfaction of the court against the claim of any other person upon the instrument. (B. E. A., s. 72.) The indemnity should be offered before action is brought.

18. A bill can only direct payment in a "sum certain in money," but it may be made payable with interest (which will count from its date, if any, otherwise from its issue), and may be made payable by stated instalments, with or without a provision that, upon default in payment of one, the whole shall be due.

When the words differ from the figures, the amount denoted by the words is the amount payable.

19. A bill is payable on demand when expressed to be payable on demand, or at sight, or on presentation, or when no time for payment is expressed.

When a bill expressed to be payable at a fixed period is undated, any holder may insert the true date, and if he inserts a wrong date by mistake it stands as the true date in the hands of a holder for value.

A bill is not invalid by reason only that it is ante-dated or post-dated, or bears date on a Sunday.

For further rules as to form, see the Bills of Exchange Act, ss. 3—21.

20. Bills drawn on a company should be addressed to the company, and not to its directors; for, in the latter case, if the directors accept it, merely describing themselves as directors, they are personally liable, while, if they accept on behalf of the company, the bill is not accepted by the party on whom it is drawn.

The Bills of Exchange Act, s. 91, says that a bill or note is sufficiently signed by a corporation (which includes "company") if sealed with the seal; but this mode is seldom used.

The Companies Act, 1862, s. 47, says that

A promissory note or bill of exchange shall be deemed to have been made, accepted, or indorsed on behalf of any company under this Act, if made, accepted, or indorsed *in the name* of the company by any person acting under the authority of the company, or if made, accepted or indorsed *by, on behalf, or on account of* the company by any person acting under the authority of the company.

So that if the name of the company were written by an authorised person, the company would be bound though the name of the person who wrote it did not appear. But it is usual for the authorised person to follow the latter part of the section and sign *for* the company, adding also his own name. In the following

form one company draws on another, and the latter accepts, and the persons possessing authority further state that they sign *by the authority* of the company. In every drawing, acceptance, and indorsement on behalf of a company it is important to give its name fully and correctly, remembering that, if the company is limited, the word "Limited" is as much a part of its name as any other word. Every director, manager, or officer who permits the company to be wrongly named on a bill, note, or cheque, incurs a penalty of £50, and is personally liable to the holder if the company does not pay. (Companies Act, 1862, s. 42.)

IX. BILL DRAWN BY ONE LIMITED COMPANY ON ANOTHER.

£100 0s. 0d.	<i>Accepted for the</i> <i>Indian Sugar</i> <i>Company, Limited, and by its</i> <i>Authority. P</i> <i>Secretary.</i>	Liverpool, 18th June, 18—.
Two months after date Company, Limited, or order value received.		pay to the Natal Coffee One Hundred Pounds,
To the Indian Sugar Com- pany, Limited.		COMPANY, LIMITED, and by its authority.
		ARTHUR JENKINS, <i>Manager</i> [or state what office he holds].

If either of the companies whose names appear on this bill were to succeed in repudiating the authority of the person signing its name, he would be liable to conviction upon proof of the absence of authority unless he could show that he believed he had authority, which would be difficult.

## CHEQUES.

21. A cheque is a bill of exchange drawn on a banker payable on demand.\* (B. E. A., s. 73.)

\* The rules already given as to bills apply to cheques as far as applicable. A cheque, therefore, must be for a sum certain in money, and must not direct payment in bills of exchange or country notes, and must not be made payable on a contingency. As long as the sum is certain there is no restriction as to the smallness of the amount. See under the head of bills as to the

\* Both the words "on demand" or "at sight" are dispensed with because, when no time is mentioned, a bill is payable on demand.

repeal of the restrictive statutes. Where the amount expressed in figures differs from the amount expressed in words, the latter is the amount payable.

Being a bill payable on demand, a cheque does not require acceptance. The banker, by cancelling it, undertakes to pay it.

22. A cheque may be drawn payable to bearer, in which case it needs no indorsement, or it may be drawn payable to *A. B.*, to *A. B. or order*, or to *the order of A. B.*, and in all these three cases it passes by the indorsement of *A. B.* It may also be drawn payable to *A. B. and C. D. or order*, or to *A. B. or C. D. or order*, and in the former case requires the indorsement of both and, in the latter, passes by the indorsement of either.

It may be drawn payable to the holder of an office for the time being, in which case it should be indorsed by the occupant of the office writing his name and the office which he holds.

Lastly, it may contain words prohibiting transfer (as *pay to A. B., not transferable*), in which case it will not be negotiable but will be valid between the parties.

As in case of a bill, a cheque drawn in favour of a fictitious or non-existing person (such as I presume "rent" or "poor-rate" would be) or order, may be treated as payable to bearer.

23. The ordinary form of cheque is as follows:

X.

London, 1st Nov., 18—

Messieurs Drummond,

Pay to Alexander Pope or bearer [*or order*]

One Hundred Pounds.

£100 0s. 0d.

JOHN DRYDEN.

Like a bill, a cheque is not invalid by reason only that it is ante-dated, post-dated, or dated on a Sunday.

24. The authority of the banker to pay a cheque is ended by countermand of payment, by *notice of the death* of the customer who drew it, or by the fact of his bankruptcy.

25. In Scotland a cheque operates, from the time of its presentment to the banker, as an assignment of the sum which it bears from the customer to the payee or holder, and, if the banker has sufficient funds of the customer and does not pay the money, the holder has an action against the banker. But in England and Ireland there is no privity of contract between the holder and the banker and, if the banker, though having

funds, does not pay, the holder cannot sue him, but must resort to his remedy against the drawer or indorsers of the cheque. There are exceptions; as where the banker has undertaken to pay the cheque and where money has been paid to him and accepted by him for the express purpose of meeting the cheque.

26. A banker is bound to know his customer's handwriting, and the loss is his own if he pays a cheque on which his customer's signature as drawer is forged.

So the loss falls on the banker if he pays a cheque in which the amount has been fraudulently raised (which is a forgery) unless the customer has issued the cheque so carelessly drawn as to give an opportunity to the forgery.

But where a cheque payable to order is paid by the banker in good faith and in the ordinary course of business it is not incumbent on him to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is to be deemed to have paid the cheque in due course although such indorsement has been forged or made without authority. (B. E. A., s. 60, and see 17 and 18 Vict., c. 59, s. 19.)\*

In fact, as the Act last referred to puts it, an indorsement which *purports* to be that of the person to whom the cheque is payable is a sufficient authority to the banker to pay the amount to the bearer.

Section 60 of the B. E. Act applies equally to the forgery of the indorsement of the payee named in the body of the cheque, and to the forgery of the indorsement of a person who, by means of a special indorsement, has become payee.

27. A customer being thus liable to be charged with a cheque which has got into the wrong hands, and an indorsement on which is forged, the precaution usually adopted against this is to *cross* the cheque.

A cheque is *crossed generally* by writing across it the words "and company," or some abbreviation thereof between two parallel transverse lines,† either with or without the words "not negotiable;" or two parallel transverse lines simply, either with or without the words "not negotiable."

A cheque is *crossed specially* by writing across its

\* But this protection does not apply to any bill, except one drawn on a banker payable on demand, which is a cheque.

† Lines drawn across the cheque in the same direction as the acceptance of a bill is written in the form above given.

face the name of a banker, either with or without the words "not negotiable," and the lines are not wanted in this kind of crossing. (B. E. A., s. 76.)

The drawer may cross the cheque in any of these ways, and so may the holder if he gets it uncrossed. And where it is crossed generally the holder may cross it specially, by adding the name of a banker, and, in any case, he may add the words "not negotiable." (B. E. A., s. 77.) A crossing once put on the cheque must not be altered, except as above mentioned, or obliterated.

When the cheque is crossed generally (*i. e.* with the lines with or without "and Co.") the banker on whom it is drawn must only pay it to *some* other banker. And where the cheque is crossed specially (*i. e.* with the name of a banker), the banker on whom it is drawn must only pay it to *that* banker or his agent for collection.\*

28. If the banker on whom the cheque is drawn obeys the crossing—that is pays, in good faith and without negligence, the cheque crossed generally to *some* banker, or the cheque crossed specially to the *particular* banker, or his agent—the banker paying may debit his customer, the drawer, with the amount. And, what is of equal importance, if the cheque has come into the hands of the payee, he is to be regarded as paid whether he lost the cheque or not. (See B. E. A., s. 80.)

29. If, however, the banker disobeys the crossing—as by paying a cheque crossed in any way over the counter or paying to the wrong banker a cheque crossed specially—he not only cannot debit his customer with it, but is liable to the "true owner" for any loss he may sustain owing to the cheque having been so paid. (B. E. A., s. 79.)

The "true owner" means the person who is by law entitled to the possession or proceeds of the cheque. If the cheque has not come to the hands of the payee, this person will be the customer, the drawer; if it has come to the hands of the payee, he may or may not be the true owner.†

\* A banker to whom a cheque is crossed (*i. e.* whose name is written across it) may cross it again to the banker who is his agent for collection; but, with this exception, a cheque must not be crossed with the names of two bankers.

† For instance, if a cheque is drawn in favour of A. B. or order, and is given to him and is crossed either by the drawer or by A. B. himself and he loses it, and the finder forges A. B.'s indorsement and gets the cheques paid, not through a banker, but across the counter of the banker on whom it is drawn, A. B. is the "true owner." And A. B. would continue the true owner though the finder, having forged his indorsement, had paid away the cheque for

30. Where, on presentment, the cheque does not appear to be crossed or to have had a crossing which has been obliterated or to have been altered or added to otherwise than is allowed by the Act, and the banker pays it in good faith and without negligence, he incurs no liability, and the payment is not to be questioned on the ground of disobedience to the crossing. (B. E. A., s. 79.)

31. Where a cheque is crossed generally or specially, but not otherwise, an additional safeguard is provided by the words "not negotiable." To make the value of these words plain, the reader must be told the following rule:—A bill or cheque which is originally made, or has by genuine indorsement become, payable to bearer, passes from hand to hand like money, and, though the finder or the thief cannot recover upon it, any one who takes it *bonâ fide* and for value from the finder or the thief may do so. And therefore a payment, *bonâ fide* and without negligence, even to the finder or the thief, will discharge the party paying.

Now the crossing does not effectually protect the true owner against this rule, because the man who takes the cheque in good faith and for value from the finder or the thief can present the cheque or get it presented in accordance with the crossing and, if payment has been countermanded, or is, for any reason, refused, may maintain an action against the drawer and indorsers. But the effect of the words "not negotiable" is that the person who takes the cheque cannot have, and is not capable of giving, a better title to the cheque than that which the person from whom he took it had. (B. E. A., s. 81.)

A "not negotiable" cheque may, therefore, be passed by the true owner to any other person, and the latter, whether he takes it gratuitously or for value, will become a true owner in turn, only no one can become a true owner who takes the bill from one who has no title to it. The transferee must inquire into the transferor's title, and will of course want his indorsement, and is of no value to an innocent person, for a forged indorsement confers no trouble on a person however innocent, and however much value he may have given. If, however, A. B. had indorsed the cheque in blank, which would make it payable to bearer, and the finder passed it for value to C. D. who got it paid across the counter, C. D. would be the true owner and, having received the money, would have nothing to complain of.

In the two former cases, A. B. would maintain an action against the drawee for paying the cheque in a manner forbidden by the crossing.



accountable to the true owner if the cheque has passed through the hands of any person who has no title to it. The words "not negotiable" impose no additional liability on the banker on whom the cheque is drawn, or on the banker to whom it is crossed. The former will pay the cheque as a matter of course to the latter. The only advantage of the words is that they give the true owner a remedy against a subsequent holder who has got the money for the cheque without a title to it.

32. I ought to add, in regard to crossed cheques, that when a person without a title to a crossed cheque pays it in to his account with a banker, or, if it is crossed specially, to his account with the specified banker, the latter, by merely receiving the money for his customer, incurs no liability to the true owner of the cheque.

33. Another safe way of remitting money, say from a country town to me in London, is for the remitter to go to a country banker and, in return for the amount and a small commission, buy a draft drawn by the country banker on his agents, bankers in London, in favour of himself, the remitter, or order, and then to indorse the draft specially in favour of my banker and post it to me. If it arrive safely, I take it to my banker and tell him to place the money to my credit. If it is stolen, detection is certain for two reasons: one that my banker's signature is known to every banker in London, and the other that bills drawn on one banker which have become payable to another are presented in a recognised course.

If the bill were made payable a few days after date or sight instead of at sight, the remitter would have the further security of being able to warn the bankers on whom it was drawn in case he heard from me that it had not reached me.

34. A cheque drawn in favour of a company or other corporation should insert the full name of the payee; otherwise there will be a difficulty in the indorsement, for the officers of the company have no authority to sign for it in any but its true name. If the company is limited, the word "limited" is not a merely descriptive word, but is as much a part of the name as any other word.

Cheques drawn on behalf of a company would be correctly drawn so as to bind the company if its name were merely written, without more, by a person having authority (*Companies Act*, 1862, s. 47), and the company's seal, without more, would be sufficient (*B. E. A.*, s. 91). But it is better to follow the other alterna-



tive of s. 47 of the Act of 1862, and have the cheque signed by some person or persons on behalf of the company, thus :

SIGNATURE OF CHEQUE ON BEHALF OF COMPANY.

On behalf of the                      Company [Limited].  
A. B., Managing Director.

The authorised person must not sign "A. B., director (or manager) of the                      Company, Limited"; for it would then be A. B.'s own cheque, and the words following would be only descriptive of A. B.

The writing or impressing the full name of the company in every drawing and indorsement made on its behalf is as important as it has been stated to be in the case of bills. (Comp. Act, 1862, s. 42.)

## PROMISSORY NOTES.

35. "A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand or at a determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer." (B. E. A., s. 82.)

Provided it be for a sum certain in money, it may be made in the ordinary form for any amount, however small. See under the head of bills as to the repeal of the statutes making notes invalid below certain amounts. The rule as to the figures differing from the words representing the amount is the same as in the case of bills and cheques. "It is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof." (*Ibid.*)

It is "inchoate and incomplete until delivery thereof to the payee or bearer." (B. E. A., s. 83.)

Like a bill, it is a negotiable instrument.

When made by one person in favour of another, it may be in the following form :—

### XII. SINGLE PROMISSORY NOTE PAYABLE AFTER DATE.

£100 0s. 0d.

*London, 1st Nov., 18—.*

Two months after date I promise to pay to Mr. John Cade, or order, One Hundred Pounds, value received.

THOMAS MORE.

This note, when indorsed by the payee, John Cade, becomes payable to bearer, and no further indorsement

36. A promissory note may be made payable to a firm, or a corporation, or to two or more either jointly or in the alternative or to the holder of an office, as has already been stated a bill may be made payable. And the rules as to indorsement are the same as in the case of a bill.

37. A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally according to its tenour. (B. E. A. s. 85.)

### XIII. JOINT PROMISSORY NOTE PAYABLE AFTER DATE.

● *London*, 1st Nov. 18—

A. B.  
C. D.

*London, 1st Nov. 18—*

A. B.  
C. D.

\* There is no need to add "jointly" after "we" in order to make the promise a joint one.

† In doing this, he must expressly reserve his right against the other. If either satisfies the note, of course there is no claim against the other.

39. Promissory notes, whether made by one or by more, may be made, like bills, payable "after sight," which means, in the case of a note, "after exhibition to the maker." If this form is desired, instead of "date" at the beginning of the note, say "sight."

40. They may also be made payable on demand.

#### XV. PROMISSORY NOTE PAYABLE ON DEMAND.

£100 Os. 0d.

London, 1st Nov. 18—

On demand I\* promise to pay to E. F. or order† One Hundred Pounds, value received.

A. B.

<sup>1</sup> Unlike a cheque, which is a bill of exchange payable on demand, a promissory note so payable need not be presented at once but is often meant to be a continuing security. But, where such a note has been indorsed, it must be presented for payment within a reasonable time‡ after the indorsement, and, if it be not so presented the indorser is discharged. B. E. A., s. 86.

41. A bank note is a promissory note made by a banker, payable to bearer on demand. Bank of England notes are a legal tender in England, except at the bank itself and its branches for sums exceeding £5, that is if I owe a man five pounds and a penny he is bound to be satisfied with a B. of E. £5 note and a penny. The notes of other banks are a good payment if taken without reservation, but are not a legal tender, *i. e.* are not what the creditor is bound to be satisfied with.

42. Where a company, incorporated by its own statute or charter, or under the Companies Acts, has authority, express or arising from the nature of its business, to give a promissory note, the instrument should be made in accordance with the rules given above for bills of exchange to which a company is a party. The following is the form of a

\* Or "we;" or "we and each of us," or—what is the same thing—"we jointly and severally."

† As this note is in favour of E. F. or order, it requires indorsement and is not issued payable to bearer on demand. If it were, being for £100 or under, it could only be issued by a banker licensed by the Commissioners of Inland Revenue.

‡ In determining what is a reasonable time, regard is to be had to the nature of the instrument, the usage of trade and the facts of the particular case. (*Ibid.*) In one case, where it was shown that the maker gave the note as a continuing security, ten months after indorsement was held a reasonable time. (*Chartered Mercantile Bank of India v. Dickson*, 3, L. R. P. C. 579.)

XVI. PROMISSORY NOTE BY AN UNLIMITED IN FAVOUR OF  
A LIMITED COMPANY.

£100 0s. 0d.

*London, 1st Nov., 18—*

Three months after date the Indian Sugar Company Limited promises to pay the Natal Coffee Company or order One Hundred Pounds, value received.

For the Indian Coffee Company  
Limited and by its authority.

A. B. [*Manager*].  
[or as the case may be].

Indorsement should be made in the same way; *i. e.* for the company, giving its full legal name, and signed by the authorised officer.\*

43. In order to render the indorser of a note liable it must be presented for payment on the due date, if payable at a fixed time; otherwise according to the rules given above. This presentment may, in ordinary cases be made to the maker personally anywhere or at his house or office to any person in charge. The rule is the same though a particular place of payment is indicated by a memorandum, such as is often written at the top or at the foot of the note or across it; as "payable at No. 1 Bridge Street." But, where the note is, *in the body of it*, made payable at a particular place (as "I promise to pay at No. 1 Bridge Street"), it must be presented at that place even for the purpose of making the maker liable and of course the indorsers will not be liable unless it is so presented (B. E. A., s. 87).

44. Promissory notes of course have not to be presented for acceptance or accepted; but save as regards acceptance the rules above given as to bills apply to promissory notes, the maker of a note corresponding with the acceptor of a bill, and the first indorser of a note corresponding with a drawer of a bill accepted payable to drawer's order (B. E. A., s. 89).

### NOTICE OF DISHONOUR.

45. When a cheque has been dishonoured by non-payment and when a bill has been dishonoured by non-acceptance or non-payment, the holder, or some one on his behalf, must, in most cases, give notice to the

\* The mere name of the company would be sufficient if in fact written by a person having authority to write it; but the form which gives the name of the person who professes to have that authority is more satisfactory.

drawer and indorsers if it is intended to hold them liable *on the instrument*. So, if a note is dishonoured by non-payment, notice must be given to the indorsers if they are to be held liable. There are some cases where these parties are liable *on the instrument* without the notice; but the mere fact that, without the notice, they know of the dishonour or that the person primarily liable is bankrupt, does not dispense with notice.

The acceptor of a bill and the maker of a note are not, in any case, entitled to notice of dishonour.

The notice may be verbal or by writing with a verbal addition; but a complete notice in writing affords better proof both of the fact and of the terms.

“The holder will do well to give the notice to all the prior parties (except acceptor or maker) whose addresses he knows; but if he only knows the address of the last indorser and gives notice to him, it becomes his interest to give notice to those above him in order to hold them liable to him, and so on of each party in order.

When the person giving the notice, and the person to whom it is given both live in the same place, the notice must be given so as to be received the next day after dishonour, or after the receipt of notice of dishonour, as the case may be.

When they both live in different places, the notice must be given as early as a letter would arrive if posted on the day after dishonour, or after receipt of notice of dishonour, as the case may be.

Notice by post is sufficient and is usual; but the sender must be prepared to prove the posting in time and to a correct address. With these, as with other notices, the sender should keep a copy with a memorandum of posting or delivery.

The following forms will serve as guides:—

#### XVII. NOTICE TO DRAWER OF DISHONOUR BY NON-ACCEPTANCE.

[*Residence of holder, day, month, and year.*]

Sir,—

The draft for £100 at three months, dated the       day of [*month and year*], drawn by you upon C. D., and indorsed by you to me, was yesterday presented to him for his acceptance, which he refused to give, and the bill now lies in my hands dishonoured.

I am, Sir, yours, etc.,  
E. F.

To A. B.

## XVIII. NOTICE OF DISHONOUR TO DRAWER OF BILL.

[*Residence of holder, day, month, and year.*]

Sir,—

The bill for £100 at three months, dated the            day of  
[*month and year*], drawn by you upon C. D., and accepted by  
him [and indorsed by you\*], was yesterday presented for pay-  
ment, and dishonoured, and now lies in my hands unpaid.

I am, Sir, yours, etc.,

To A. B.

E. F.

## XIX. NOTICE OF DISHONOUR TO INDORSER OF BILL.

[*Residence of holder, and day, month, and year.*]

Sir,—

The bill for £100 at three months, dated the            day of  
[*month and year*], drawn by A. B. upon C. D., and accepted  
by him, and indorsed by you, was yesterday presented for  
payment, and dishonoured, and now lies in my hands unpaid.

● I am, Sir, yours, etc.,

To S. T.

E. F.

## XX. NOTICE OF DISHONOUR TO DRAWER OF CHEQUE.

[*Residence of holder, and day, month, and year.*]

Sir,—

Your cheque for £100 on Smith, Payne and Smith, dated  
the            day of [*month and year*] in favour of            was  
yesterday presented for payment [*follow last preceding form*].

## XXI. NOTICE OF DISHONOUR TO INDORSER OF CHEQUE.

[*Residence of holder, and day, month, and year.*]

Sir,

A. B.'s cheque for £100 on Smith, Payne and Smith, dated  
the            day of [*month and year*], and indorsed by you,  
was yesterday presented for payment [*follow notice to indorser*]

## XXII. NOTICE OF DISHONOUR TO INDORSER OF NOTE.

[*Residence of holder, and day, month, and year.*]

Sir,—

A. B.'s promissory note at three months for £100 in favour  
of [you or order] and indorsed by you, was yesterday pre-  
sented for payment [*follow notice to indorser of bill.*]

As to the “Summary Procedure on Bills of Exchange  
Act, 1855” [18 and 19 Vict., c. 67], still in force in the  
county courts, see Class VIII, 15.

\* If the bill be drawn payable to the drawer's order, it will, of  
course, have been indorsed by him; if not so indorsed omit the  
words in brackets.

## STAMPS.

46. The stamp duty on a cheque (which is a bill, draft or order payable on demand) is One Penny, which may be denoted by an impressed or by an adhesive stamp. In the latter case, it must be affixed by the drawer and he must cancel it in the manner required for the cancellation of such stamps (*see Chap. XIII*). If the drawer does not affix a stamp, a subsequent holder must do so and cancel it and, if no holder does so, the banker must.

						s.	d.
BILLS OF EXCHANGE, not being cheques, and PROMIS-							
SORY NOTES, drawn, payable, or actually paid or							
indorsed or negotiated in the United Kingdom,							
bear, where the amount does not exceed							
				£5	.	0	1
Exceeding £5, and not exceeding	.	.	.	£10	.	0	2
"	10	"	"	.	.	25	0 3
"	25	"	"	.	.	50	0 6
"	50	"	"	.	.	75	0 9
"	75	"	"	.	.	100	1 0
"	100	for every	£100	or fractional part of			
£100	.	.	.	.	.	1	0

If the amount is payable with interest it does not require a higher stamp duty. If a receipt is given on a duly stamped bill, cheque or note, it requires no additional stamp.

The following are the—

## EXEMPTIONS.

Bank of England notes and Bank of Ireland notes.

Drafts or orders drawn by any banker in the United Kingdom upon another banker in the United Kingdom, not payable to bearer or to order, and used solely for settling accounts between them.

Letter written by one such banker to another such banker, directing the payment of a sum of money; but not payable to bearer or to order and not sent or delivered to the person to whom payment is to be made, or to any one on his behalf.

Letters of credit granted in the United Kingdom, authorising drafts to be drawn out of the United Kingdom, payable in the United Kingdom.

Orders of the Paymaster-General of the Court of Chancery in England or the Accountant-General of the Supreme Court

of Judicature in Ireland; warrants for payment of annuities granted by the National Debt Commissioners or for any dividend or interest on Parliamentary Stocks or Funds; bills by the Lords of the Admiralty on the Accountant-General of the Navy; bills drawn for payment of Army pay, or allowance from any public account; coupons attached to any security.

Draft or order drawn on any banker in the United Kingdom by an officer of a public department of the State for payment of money out of a public account.

Bill drawn in the United Kingdom for the sole purpose of remitting money to be placed to any account of public revenue.

Coupon or warrant for interest attached to and issued with security or with an agreement or memorandum for the renewal or extension of time for payment of a security.



## CLASS II.—SECURITIES.

### CONDITIONAL BILLS OF SALE.

1. “Bill of Sale” is a name given to a deed, or instrument under seal, by which personal chattels are transferred without delivery: for the delivery of the deed does instead of the delivery of the chattels

In this place we are only concerned with those bills of sale which are given as securities for money. (As to absolute bills of sales, see (Class IX). These instruments are made securities for money by the debtor conveying the property in the personal chattels to the creditor with the proviso that he is not to take possession of them as long as certain payments are made and that, when they are made, the chattels shall become the property of the debtor again.\* These documents are regulated by the Bills of Sale Acts, 1878 and 1882, which give the name *grantor* to the debtor who conveys the chattels, and *grantee* to those to whom they are conveyed.

A bill of sale given as security for money may be a security for money already due or for money advanced at the time or partly for one and partly for the other. In either case, when given as security “for the payment of money by the grantor thereof” [as it almost, always is], it is required by Sec. 9 of the Act of 1882 to be made in accordance with the form given in that Act, and will otherwise be void. That is, it must substantially follow the form, (See form 1.)

2. A bill of sale can only deal with “personal chattels,” which means articles “capable of complete transfer by delivery.”

The extent of the term “personal chattels” is most easily explained By stating first that it does *not* include

\* Though the holder of a Bill of Sale by way of security for repayment of money acquires thereby the property in the goods included, yet if the grantor become Bankrupt, the grantee's title is liable to be defeated by the Trustee's, if the goods are trade effects and have remained, at commencement of the Bankruptcy, in the reputed ownership of such grantor. Again a grantor, a Farmer, gave a Bill of Sale in farm stock,—afterwards he sold part of the stock in the usual way of trade. It was held that the innocent buyer could hold as against the Bill of Sale holder. See *National Mercantile Bank v. Hampson*, 5 Q. B. D., 177.

leaseholds nor fixtures in general when assigned together with an interest in the land or building,\* nor growing crops when assigned together with the land, nor stock or shares of a government or of a company, nor stock on a farm if, by custom or by covenant, it is not removable, nor choses in action.†

What it does include is “goods, furniture and other articles capable of complete transfer by delivery, and (*when separately assigned or charged*) fixtures and growing crops” (*Act of 1878, s. 4*).

It also includes trade machinery, that is, machinery used in or attached to any factory or workshop; but not—

- (1) The fixed motive powers, such as the water-wheels and steam engines, and the steam-boilers donkey engines and other fixed appurtenances of the said motive powers; nor—
- (2) The fixed power machinery, such as the shafts, wheels, drums and their fixed appurtenances, which transmit the action of the motive powers to the other machinery, fixed and loose; nor—
- (3) The pipes for steam, gas and water in the factory or workshop (*Act of 1878, s. 5*).

3. The following is the—

#### I. STATUTORY FORM OF BILL OF SALE AS SECURITY FOR MONEY.

This Indenture made the                      day of                      between A. B. of                      of the one part and C. D. of                      of the other part Witnesseth that in consideration ‡ of the sum of £                      now paid to A. B. by C. D. the receipt of which the said A. B. hereby acknowledges [*or whatever else the consideration may be*] he the said A. B. doth hereby assign unto

\* This means “in the same deed,” not “by the same words” [*Act of 1878, s. 7*]

† Your choses in action are things which are not in your actual or constructive possession, such as money owing to you, legacies and residuary estate bequeathed to you, trust funds, stock, bills of exchange, etc.

‡ If the consideration is any sum under £30, the instrument will be void (*Act of 1882, s. 12*), and if it is not truly set forth, the instrument will be void as to the chattels which it comprises (*Ibid.*, s. 8). The Courts have said that, in stating the consideration, what took place need not be stated in precise detail. It is sufficient if the consideration be expressed with substantial accuracy—if the legal effect or the commercial and business effect of the transaction be given (*Ex parte Johnson*, 26, Ch. D. 338; *ex parte National Mercantile Bank*, 15 Ch. D. 42; *Credit Company v. Cobb*, 6 O. B. D. 298). Nevertheless the greatest care is demanded in the true statement of the consideration; for want of which many bills of sale have been set aside.

C. D. his executors, administrators and assigns all and singular the several chattels and things specifically described in the Schedule hereto annexed by way of security for the payment of the sum of £                      and interest thereon at the rate of per cent. per annum [*or whatever else may be the rate*]. And the said A. B. doth further agree and declare that he will duly pay the said C. D. the principal sum aforesaid together with interest then due by equal                      payments of £ on the                      day of                      [*or whatever else may be the stipulated times or time of payment*]. And the said A. B. doth also agree with the said C. D. that he will [*here insert terms as to insurance, payment of rent or otherwise, which the parties may agree to for the maintenance or defeazance of the security.*]

Provided always that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said C. D. for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act 1882.

In witness whereof the said A. B. hath hereto set his hand and seal the day and year first above written.

A. B. [*Seal.*]

Signed and sealed by the said A. B. in the presence of me.

E. F.

[*Address and occupation.*]

4. Annexed to this bill of sale or written on it there must be a schedule containing an inventory of the personal chattels comprised in it and, as regards what is not specifically described\* in the inventory, the bill of sale is to have no effect except as against the grantor himself. [*Act of 1882, s. 4*]. And, although the personal chattels are specifically described, the bill of sale will be void in respect of them, except as against the grantor, if he was not the true owner *at the time* of signing and sealing the instrument. (*Act of 1882, s. 5*.)

Of course if the grantor professes to convey what is another's, the instrument binds no one but himself. But the provision is aimed at property which the grantor shall afterwards acquire.

To this the Act creates an exception, the true value of which shall be explained further on, in favour of certain things which do not all admit of specific description, namely,

Crops actually growing when the bill of sale is executed and "separately assigned or charged" [which means separately from the bond] and

Fixtures "separately assigned or charged"

\* The description must be as good as what is "used in business." "Household furniture and effects" and "implements of husbandry" are insufficient without details.

(which means separately from the land or building) and any plant or trade machinery, where such fixtures, plant or trade machinery "are used in, attached to or brought upon" any lands, factory, shop, &c. *in substitution for* the like articles described in the schedule. (*Ibid.*, s. 6.)

The consideration for which the bill of sale is given must be truly set forth; otherwise the instrument will be void in respect of the personal chattels contained therein. (*Act of 1882, s. 8.*) But see the note to the statutory form of bill of sale, *ante*.

5. The proviso at the end of the form above given not only saves a good deal of writing in the instrument itself but compulsorily inserts the very reasonable provisions of the seventh section to which it refers, namely,

Personal chattels assigned under a bill of sale\* shall not be liable to be seized or taken possession of by the grantee for any other than the following causes:—

- (1) If the grantor shall make default in payment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale *and necessary for maintaining the security*;
- (2) If the grantor shall become a bankrupt or suffer the said goods or any of them to be distrained for rent, rates or taxes;
- (3) If the grantor shall either fraudulently remove or suffer the said goods or any of them to be removed from the premises;
- (4) If the grantor shall not, without reasonable excuse, upon demand in writing by the grantee produce to him his last receipts for rent, rates and taxes;
- (5) If execution shall have been levied against the goods of the grantor under any judgment at law.

6. The execution of a bill of sale *by the grantor* must be attested by one or more credible witnesses, not being a party or parties thereto. It is no longer necessary that a solicitor shall attest the execution, or that the attestation shall contain a statement that the witness, before execution, explained the effect of the instrument to the grantor. (*Act of 1882, s. 10.*) This is so, both as to absolute and conditional Bills of Sale.

7. If the bill of sale is executed in England, it must be registered† within seven clear days after its execu-

\* That is, when given as a security for money; for the Act of 1882 applies to none other.

† The Masters of the Supreme Court of Judicature execute the office of Registrar under the Bills of Sale Acts, 1878, 1882.

tion; if in any place out of England, then within seven clear days from the day when it would arrive in England in the ordinary course of post if posted immediately after its execution. (*Act of 1882, s. 8.*) If the time expires on a Sunday or day when the office is closed, the registration will be valid if made on the next following day on which the office is open. (*Act of 1878, s. 22.*)

The person who desires to register must attend at the office of the Master at the Central Office at the Royal Courts of Justice with (1) the original bill of sale duly stamped and its schedule (2) a true copy thereof and of every attestation and execution and (3) an affidavit of the time of the bill of sale being made or given and of its due execution and attestation and a description of the residence and occupation of the person making or giving the bill of sale and of every attesting witness. (*Act of 1878, s. 10.*)

The description of the residence and occupation of the grantor and of the attesting witness must be accurate and complete, and must state the residences and occupations at the time of the execution of the bill of sale. If a man follows any calling, it will not do to describe him merely as "gentleman" or "esquire," and if a man is a clerk, he must either be described as a clerk in holy orders or as a clerk to such and such a person.

An affidavit merely verifying the signature of the attesting witness is not an affidavit of a "due attestation," it must state that the witness was present at the execution. (*See Form viii.*)

If two or more bills are given comprising, in whole or in part, the same chattels, they have priority as regards such chattels, according to the dates of their registration respectively. (*Act of 1878, s. 10.*)

A transfer or assignment of a registered bill of sale need not be registered, (*Ibid.*).

8. The registration of a bill of sale becomes void unless it is renewed within five years. (*Act of 1878, s. 11.*)

Five years must not be allowed to elapse between the registration and the first renewal, or between that and the second renewal, and so on.\* The renewal is effected by filing an affidavit stating the date of the bill of sale and of the last registration thereof, and the names, residences and occupations of the parties thereto as

\* The omission to renew the registration within five years renders the bill of sale wholly void even as between grantor and grantee. (*Fenton v. Blythe, 25 Q. B. D., 417.*)

*stated therein* and that the bill of sale is still a subsisting security. *Act of 1878, s. 11.* (See Form xiii.)\*

9. The Masters of the High Court keep a book called a "Register," in which are entered bills of sale, their registration and renewals of registration, with particulars of the instruments as required by the Act of 1878, and also an Index to facilitate searches. All grantors whose names begin with the same initial are indexed together, but the alphabetizing is carried no further. (*Act of 1878, s. 82.*)

When the affidavit describes the grantor as residing outside the London bankruptcy district (see Bankruptcy Act, 1883), or where the bill of sale describes the chattels enumerated therein as being in a place outside that district, the Masters send an abstract of the bill of sale to the registrar of the County Court in whose district the grantor resides or the chattels lie, and, if they lie in two districts, to the registrar of the County Court of both. Any one may search at the Central Office or the County Court on payment of 1s. and may have copies or extracts on paying 6d. for every 72 words, a figure counting as a word, and may himself make extracts of the dates of execution, registration, renewal, and satisfaction and the names, residences and occupations of the parties, and the consideration; paying 1s. in judicature stamps for each bill of sale inspected. (*Act of 1878, s. 16; Act of 1882, s. 16.*)

Before taking a bill of sale, it is desirable to search in order to see whether the grantor has already given a bill of sale of the same chattels and, if so, whether it is satisfied.

10. Where there has been an omission to register a bill of sale or an affidavit of renewal within the times allowed or a mis-statement of the name, residence or occupation of a person, a Judge may order the time to be extended, or the omission or mis-statement to be rectified, if he is satisfied that the error "was accidental or due to inadvertence," and he may impose terms as to security, notices, &c.

11. A Master, upon receiving the prescribed† evidence

\* The fees, which are payable in common law stamps are:— Filing bill of sale, 2s. Filing affidavit of execution 2s. Affidavit of renewal (including filing) 5s. (*Act of 1878, s. 18.*)

† "Prescribed" means prescribed by the rules under the Act, which require a consent to the satisfaction signed by the person entitled to the benefit of the bill of sale and verified by affidavit. (See forms xiv, xv.) If the bill of sale has been transferred, the transfer should be made an exhibit to the affidavit, and be verified by it.

that a bill of sale has been satisfied, may order satisfaction to be entered on any registered copy (*Act of 1878, s. 15*). (See Forms xv—xviii.)

12. Where a bill of sale has been satisfied by the discharge of the debt secured, the grantor will do well to have satisfaction entered as already mentioned; but if before he has done this, the holder of the bill seizes the goods when he has no right to do so, the grantor should avail himself of Sec. 7 of the Act of 1882, under which the grantor, within five days of the seizure may apply to the High Court or a Judge and, on showing "that by payment of money or otherwise the cause of seizure no longer exists," may obtain an order restraining the removal or sale. The grantor may also make use of the five days for getting rid of "the cause of seizure;" as by paying any principal or interest in arrear or complying with his warrant for maintaining the security. See Sir James Hannen's judgment in *Furber v. Cobb*, 18 Q. B. D., 494.

13. Conditional bills of sale will be void as against the grantor's creditors by virtue of the Bankruptcy Act, 1883, under the same circumstances as are mentioned in Class ix, concerning absolute bills of sale, and also under s. 44 of that Act, where, before the grantee seizes, the grantor becomes bankrupt and the goods are such as are dealt with in his trade or business and they remain in his possession and reputed ownership. The household furniture, works of art, books or jewellery of a tradesman who does not deal in such things would of course not be affected by the section.

14. The statutory form of bill of sale (form i) being imperfect without the blanks being filled up, especially as to the maintenance and defeasance of the security, I insert a form in which that is done.

## II. BILL OF SALE TO SECURE MONEY ALREADY DUE AND A LOAN OF

This Indenture made the 26th day of December 18— between A. B. of No. 1 Queen Ann Street in the City of Westminster architect of the one part and C. D. of No. 2 in the same street surgeon of the other part Witnesseth that in consideration \* of £50 now owing by the said A. B. to the said C. D. and his forbearance therefor and of £50 this day lent by him to the said A. B. the receipt of which he acknowledges. He the said A. B. doth hereby assign † unto C. D. his executors

\* See note to statutory form.

† He must avoid assigning "as beneficial owner," because these words, by the Conveyancing and Law of Property Act, 1881, imply



administrators and assigns All and singular the several chattels and things specifically described in the schedule hereto annexed and which are at his residence No. 1 Queen Ann Street aforesaid by way of security for the payment of £100 and interest thereon at the rate of Ten per centum per annum And the said A. B. doth further agree with the said C. D. and declare as follows:—

2. That he the said A. B. will duly pay to the said C. D. the principal sum aforesaid together with the interest then due by quarterly payments of £27 10s. 0d.; £26 17s. 6d.; £26 5s. 0d. and £25 12s. 6d. respectively on the four usual quarter days following the day of the date hereof \* or if any of such quarter days falls on a non-business day then on the first succeeding business day.

3. And the said A. B. doth also agree with the said C. D. that during the continuance of this security the said A. B. his executors and administrators will do as follows:—

(a) Will not without the written consent of the said C. D. his executors administrators or assigns remove the said chattels and things or any of them or suffer them or any of them to be removed from his residence aforesaid except (in case he changes his residence) to his new residence in England in which case he shall immediately give notice in writing of such removal and of his new residence to which the said chattels and things are removed to the said C. D. his executors administrators or assigns;

(b) And will pay all rent, rates and taxes in respect of the present residence of the said A. B. and of every place at which the said chattels and things may for the time being be within days of such rent, rates and taxes respectively falling due. And will on demand in writing by the said C. D. his executors administrators or assigns produce to him or them the last receipts for such rent rates and taxes respectively.

(c) And will permit the said C. D. his executors administrators and assigns or any person appointed in writing for the purpose by him or them at any time in the daytime to enter upon the said residence of the said A. B. or any place where the said chattels and things may be for the purpose of inspecting them.

(d) And will from time to time on demand by the said C. D. his executors administrators or assigns but at the expense of the said A. B. his executors or administrators execute and do all further deeds acts and things for perfecting this security.

4. The said A. B. his executors administrators and assigns may seize the said chattels and things for any of the causes set forth in section seven of the Bills of Sale Act (1878) Amend-

the conveyance of a right to immediate possession, which is contrary to the Bills of Sale Act, 1882.

\* The form in the Schedule to the Act of 1882 requires the payment to be at a fixed time and not on demand. (*Hetherington v. Groom*, 13 Q. B. D. 789.)



ment Act, 1882, and when so entitled may by themselves or their agents enter and if necessary break into the residence of the said A. B. and any building or place where the said chattels and things or any of them are or are supposed to be and may remain there for the purpose of seizing and selling and may after five clear days\* sell the said chattels and things there or may remove the same and may act in all things relating to the sale with the discretion of absolute owners.

5. The said C. D. agrees with the said A. B. that the stipulations on his part being performed or the said principal sum being realised as herein provided with interest as aforesaid to the time of payment the said C. D. his executors administrators or assigns will on demand sign a written consent to satisfaction being entered in respect of these presents.

6. Provided always that the chattels and things hereby assigned shall not be liable to seizure or to be taken possession of by the said C. D. his executors administrators or assigns for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act 1882.

In Witness whereof the said parties hereto have hereto set their hands and seals the day and year first above written.

\* A. B. [Seal.] C. D. [Seal.]

Signed and sealed by said A. B. [and C. D.†] in the presence of me

E. F.

[*True address and occupation*]

15. But the property assigned may be such as to require continual renewal or replacement, as where a manufacturer borrows on his machinery, a dairyman on his cows, or a tradesman on his stock in trade. In these cases it is necessary to frame the instrument so as to pass as great a right as possible to all the machinery, cows or stock that may be substituted for what is worn out or sold.

Section 5 of the Act of 1882 says that a bill of sale is to be void, except as against the grantor, in respect of any personal chattels of which he is not the true owner at the time of executing the instrument. And then follows the exception in Section 6 which says that nothing in the Act shall make the bill of sale void as regards crops growing on the land at the time of the execution of the bill of sale, and fixtures, plant or trade

\* The chattels and things must remain on the premises where they are seized and must not be removed or sold till after five clear days from the day of seizure. (*Act of 1882, s. 13.*)

† For the registration of the bill of sale it is only necessary that the grantor's signature should be attested. It is desirable that the grantee should also execute, but his execution may be separate and separately attested.

machinery attached to or brought upon the land, farm, factory, workshop &c. in substitution for any of the like articles described in the schedule as being assigned by the bill of sale.

But, notwithstanding this exception, it has been held that words purporting to assign the future acquired property, though it be within the exception, do not give the grantee a legal, but only an equitable, interest in the articles as they come upon the premises. The words operate only as an agreement to assign and the grantee's equitable interest (*i. e.* his right to have a legal interest) is only perfected into a legal interest by possession.\*

16. Now the grantor can only take possession for one of the causes described in Section 7 of the Act of 1882 (already mentioned) and, when he does so, the bill of sale, as a conveyance of chattels is at an end. So the best way, whenever a substantial substitution takes place, is either to pass the new articles by a separate bill of sale or to have a new bill of sale comprising the articles originally assigned, or what are left of them, together with the after acquired articles; satisfaction being entered on the old bill of sale.†

17. It is by means of the covenants for maintaining the security that the grantee of the bill of sale is enabled to insist on having the substituted articles. These covenants are commonly used, and the model form in the Schedule to the Act of 1882 invites the parties to insert them. The breach of them by the grantor, is one of the causes which, under Section 7 of the Act,

\* So that if a part of the machinery was a loom which broke and had to be replaced by a new one, and the grantor got a new loom and passed it by bill of sale as security to a creditor who had no knowledge of the first bill of sale, the latter would acquire a legal title to it, and the grantee of the first bill of sale would have no title to it at all, whether it were brought upon the premises or not. (See *Pollis v. Robinson*, 15 Q. B. D. 288 [C. A.]; *Joseph v. Lyons*, *Ibid.* 280.)

† Where the property assigned consists of fixtures, plant or trade machinery and, if they are worn out, the like articles are to be substituted for them, the latter may be included in the body of the deed without making it void, because sec. 6 says so; but they cannot be included in the schedule, because they are not in existence, and so the assignment being made by reference to the schedule, only operates as an agreement to assign. Where the bill of sale is of other kinds of articles, such as stock in trade, the articles to be substituted must not be mentioned in the body of the instrument, or it will be void for not following the statutory form. Such articles, not being as yet the property of the grantor, cannot well be included in the schedule, and, if they were, the instrument would not operate to convey them. The effectual assurance for the substitution is the covenant to maintain the security.

justifies a seizure under the bill of sale. The grantor, therefore, has a strong inducement to observe the covenants and, if he does so, the best way of vesting the new articles in the grantee is that above suggested.

18. I will now give a form assigning machinery together with the substituted portions to be brought on the premises when required, and will indicate the variations proper in case the security should be live stock or a shop-keeper's stock in trade and then will follow a form for a new bill of sale to be executed if necessary from time to time to convey to the grantee the legal as well as the equitable property in the after-acquired articles.

### III. BILL OF SALE OF TRADE MACHINERY, TO SECURE A LOAN.

This Indenture made the 26th day of December, 18 , between A. B. of the Mills near Bradford yarn-spinner of the one part, and C. D., of , gentleman of the other part. Witnesseth that in consideration of the sum of £1000, now paid by C. D. to A. B. the receipt whereof the said A. B. hereby acknowledges, He the said A. B. doth hereby assign unto C. D. his executors administrators and assigns All and singular the fixtures, plant trade machinery chattels and things specifically described in the schedule hereto annexed, hereinafter called "the specified articles" together with all articles (hereinafter called "the substituted articles") which in accordance with the covenant on the part of the said A. B. hereinafter contained shall be brought into the said Mills or upon the land or buildings occupied therewith in substitution for any of the specified articles By way of security for the payment of the sum of £1000 and interest thereon at the rate of six per centum per annum. And the said A. B. doth further agree with the said C. D. and declare as follows:

2. That the said A. B. his executors or administrators will duly pay to the said C. D. his executors administrators or assigns the said principal sum of £1000 together with the interest then due on the 26th day of December in the year 18 \* and interest in the meantime on each principal sum at the rate of six per centum per annum quarterly on the usual quarter days and if any day of payment is a non-business day then on the next business day thereafter.

3. That the said A. B. his executors or administrators during the continuance of this security will for the maintenance thereof† do as follows:—

\* See note to Form ii, clause 2, as to time of payment.

† The Act of 1882, by the form of bill of sale in its Schedule, invites the insertion of a covenant "for the maintenance of the security," which, indeed, had always been in use. The proviso at

(a) Will from time to time as any of the specified articles become broken, damaged, lost or worn out cause the same to be repaired or to be replaced by articles of a similar kind to be substituted for them respectively and brought into the said Mills or upon the said land or buildings;

(b) And will not without the written consent of the said C. D. his executors administrators or assigns remove the specified articles or the substituted articles or any of them or suffer them or any of them to be removed from the said Mills, land and buildings save when necessary for the purpose of repair or replacement and will keep all such articles in good repair and in working order and will maintain the security at its present value, allowance being made for fall of prices (if any) and reasonable wear and tear;

(c) And will keep the specified articles and the substituted articles insured against fire in the name of the said C. D. in the sum of £            in the            Office.

(d) And will pay all [rent] rates and taxes in respect of the said Mills, land and buildings within            days of becoming due;

(e) And will on demand in writing by the said C. D. his executors administrators or assigns produce to him or them the last receipts for the premium on such insurance and for such [rent] rates and taxes.

(f) And will from time to time on demand by the said C. D. his executors administrators or assigns but at the expense of him the said A. B. his executors or administrators execute and do all further deeds acts and things required for more effectually vesting in the said C. D. his executors administrators or assigns the said substituted articles and in particular when and so often as the said substituted articles shall amount in value to £            will execute a new bill of sale of the remaining specified articles and the substituted articles to secure the said principal sum and interest as aforesaid and to stand instead

the end of the form says that the grantee is only to seize for a cause mentioned in sec. 7. One of the causes mentioned in that section is default by the grantor in the performance of any covenant necessary for maintaining the security. Therefore the grantee may seize for default in performance of any such covenant.

It has been held that a covenant to replace or repair articles destroyed or deteriorated is necessary for the maintenance of a security and that, therefore, the grantee may seize and sell if the grantor fails to replace or repair. (*Furber v. Cobb*, 18 Q. B. D. 494.) But the parties may not insert any stipulation they please under the guise of a covenant to maintain the security followed by an authority to seize for breach of any covenant; for, if the stipulation is not necessary for that purpose, the covenant cannot make it so and, if it is not so necessary, a seizure for breach of it would be unlawful under section seven. (*Ibid.*) If the parties insert any unnecessary covenant, the power to seize must be made to arise only in the events mentioned in section 7. (See *Topley v. Corsbie*, 20 Q. B. D. 350.) This has been observed in the forms here given.

## CLASS II.

these presents which are then to be satisfied and the said D. his executors administrators or assigns are to consent in writing to such satisfaction.

(g) And will permit the said C. D. his executors administrators and assigns, or any person appointed in writing for the purpose by him or them, once in every week in the daytime to enter upon the said Mills, land and buildings and inspect the specified articles and the substituted articles (if any).

4. All moneys receivable under the said insurance during the continuance of the security shall at the option of the said C. D. his executors administrators or assigns be applied either towards reinstating the specified articles and the substituted articles (if any) or towards the payment of the moneys hereby secured.

5. The said C. D. his executors administrators and assigns may seize the specified articles and the substituted articles (if any) for any of the causes set forth in the 7th section of The Bills of Sale Act (1878) Amendment Act, 1882, and when so entitled may by themselves or their agents enter and if necessary break into the said Mills land and buildings and any building or place where the said articles or any of them are or are supposed to be and may remain there for the purpose of seizing and selling and may seize and after five clear days\* may sell the said articles there or may remove the same for sale and may act in all things relating to the sale with the discretion of absolute owners.

6. The said A. B. agrees with the said C. D. that the stipulations on his part being performed or the said principal sum with interest as aforesaid to the time of payment being realised as herein provided or otherwise satisfied these presents shall be of no effect and on the demand and at the charges of the said A. B. his executors or administrators the said C. D. his executors administrators or assigns shall sign a written consent to satisfaction being entered on these presents and shall assign all policies of insurance effected in pursuance of these presents to the said A. B. his executors or administrators and until assignment shall hold the same in trust for him or them.

7. Provided always that the chattels and things hereby assigned shall not be liable to seizure or to be taken possession of by the said C. D. his executors administrators or assigns for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act, 1882.

In witness whereof the said parties hereto have hereto set their hands and seals the day and year first above written.

A. B. [*Seal*] C. D. [*Seal*].

Signed and sealed by the said A. B. [and C. D\*] in the presence of me.

“ E. F.  
[*True address and occupation*]

\* It is desirable that the grantee should execute this bill of sale, but his execution may be separate and separately attested.

## IV. BILL OF SALE OF A DAIRYMAN'S COWS AND PLANT.

[Follow the last preceding form with the requisite alterations down to "doth hereby assign" and go on as follows.]

The 20 milch cows\* and all the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment etc. And the said A. B. doth further agree with the said C. D. as follows:—

2. [here insert covenant for payment.]

3. That the said A. B. his executors or administrators during the continuance of this security will for the maintenance thereof, do as follows:

(a) When and so often as any one of the 20 milch cows hereby assigned shall be lost or die or become unfit for use in the said dairy-farm or dairy will replace the same with another milch cow fit for use there, and when and so often as any of the other chattels and things hereby assigned become broken damaged lost or worn out will repair the same or replace it by another similar article and will bring such substituted cows and other articles upon the said dairy-farm or dairy for use there.

[Insert (b) (c) (d) and (e) from the last preceding form, or such of them as may be required, with the necessary changes, and proceed thus]

(f) And will at his and their proper charges from time to time on demand by the said C. D. his executors administrators or assigns execute and do all deeds, acts and things required for preserving and perfecting this security and in particular when and so often as the cows or other articles substituted as aforesaid shall amount in value to £      will on demand by the said C. D. his executors administrators or assigns execute a new bill of sale to him or them for securing the payment of the said principal sum and interest as aforesaid and assigning thereby both such of the cows, chattels and things hereby assigned as shall remain subject to this bill of sale and the said cows, chattels and things substituted as aforesaid to stand instead of these presents, the said C. D. his executors administrators or assigns signing a written consent to satisfaction being entered in respect of these presents.

[Follow the last preceding form to the end, with the necessary alterations, omitting 4 if there is no insurance.]

19. If the security given by the lender is a shopkeeper's fittings and stock in trade, the latter to be sold in the ordinary course of business and to be removed from time to time, the first thing that will occur to the reader is that the shopkeeper, having parted with the property in the stock in trade, cannot sell it. This is

\* Describe the cows in the schedule by ages, colour, breed, brands, etc. See *Carpenter v. Deen*, 23 Q. B. D. 566.

got over by the grantee giving his permission to sell in the ordinary course of retail business and the grantor covenanting to do so.\* The value of the several articles or classes of articles in the schedule will be written against them and the following will be the form of the bill of sale of (say) a retail jeweller's fittings and stock :—

#### V. BILL OF SALE OF A RETAIL JEWELLER'S FITTINGS AND STOCK.

1 & 2 [*Follow clauses 1 and 2 of the last preceding Bill of Sale (Form iv) making the necessary changes.*]

3. That he the said A. B. his executors and administrators, during the continuance of this security, will do as follows :

(a) Will continge the business of a retail jeweller at No. \_\_\_\_\_ in Blank Street aforesaid and will with the permission of the said C. D. (which is hereby granted) from time to time in the ordinary course of retail business and in a prudent and husband-like manner and for proper prices and for cash but not otherwise sell such of the chattels and things hereby assigned as consist of a jeweller's stock in trade and whenever the sum so sold amounts in value to £ \_\_\_\_\_ will immediately give notice of such sale to the said C. D. his executors administrators and assigns and will within \_\_\_\_\_ days from such sale replace the articles so sold with other articles of equal or greater value suited for sale in the said business and to form part of the stock thereof herein referred to as "substituted articles" and will proceed in like manner to sell the said substituted articles. And it is hereby declared that all articles which, on inspection as hereinafter provided by the said C. D. his executors administrators or assigns or his or their agents, are not produced to the person or persons so inspecting shall be regarded as having been sold for cash and as being of the value set against them respectively in the schedule hereto ;

(b) And will not without the written consent of the said C. D. his executors administrators or assigns remove the specified articles or the substituted articles or any of them or suffer them or any of them to be removed save in the course of sale as aforesaid from the said shop at No. \_\_\_\_\_ in Blank Street aforesaid and will keep such articles with due care and in good order for sale and will maintain the security at its present value.

[*Follow form iii from (c) inclusive to the end, making the necessary changes.*]

\* See *Joseph v. Lyons*, 15 Q. B. D. 280, and *Hullus v. Robinson*, *ibid.* 288, as to after acquired property. And see *National Mercantile Bank v. Hampson* and note to p. 24 ante.



## VI. NEW BILL OF SALE AFTER A PARTIAL SUBSTITUTION OF NEW CHATTELS.

This Indenture made the      day of [*month and year*] between A. B. of the      Mills near Bradford yarn-spinner of the one part and C. D. of      gentleman of the other part Witnesseth that on consideration of the written consent of the said C. D. to the entry of satisfaction in respect of a bill of sale made the 26th day of December 18— between the parties hereto He the said A. B. doth hereby assign unto the said C. D. his executors administrators and assigns all and singular the several fixtures, plant, trade machinery, chattels and things described in the schedule hereto annexed\* (hereinafter called "the specified articles") together with all hereinafter called "substituted articles" which in accordance with the covenant on the part of the said A. B., hereinafter contained shall be brought into the said Mills or upon the land or buildings occupied therewith in substitution for any of the specified articles by way of security for the payment of the sum of £1000 (being the same sum as was secured by the said bill of sale dated the 26th day of December, 18—) and interest thereon at the rate of Six per centum per annum.

[*Here insert stipulations like those in the old bill of sale ; in the schedule describe the substituted articles as "new," and let C. D. execute as well as A. I*

## VII. TRANSFER OF BILL OF SALE.

This Indenture made the      day of [*month and year*] between C. D. of      of the one part and G. H. of      of the other part Witnesseth as follows :

1. In consideration of £      this day paid by the said G. H. to the said C. D. (the receipt whereof he acknowledges) the said C. D. transfers to the said G. H. the bill of sale described in the schedule hereto and all the chattels and things included therein and all the rights of the said C. D. thereunder and the principal sum of £      secured thereby† interest thereon having been paid to the date hereof.

2. The said C. D. covenants with the said G. H. that the said bill of sale is a valid and subsisting security for the said sum of £      and interest thereon ; that he the said C. D. has not done or knowingly suffered or been party or privy to anything whereby the same may be impeached and that he and all persons claiming through or under him will at all times on demand by and at the charges of the said G. H. his executors administrators or assigns execute and do all deeds, acts and things required for perfecting this transfer.

\* These will be the articles as they now stand, some being original and some new ; and the following words refer to future substitutions of articles not yet in existence.

† Or say "£      the unpaid balance of the principal sum of £      secured thereby," or as the case may be.



## SCHEDULE.

*[Here describe the transferred bill of sale by date, parties, sum and interest secured and date and number of registration.]*

In Witness whereof the parties hereto have hereto set their hands and seals the day and year first above written

C. D. [Seal]. G. H. [Seal].

*[Attestation.]*

20. Section 10 of the Act of 1878 requires an affidavit testifying to the matters contained in the form following to be filed with a copy of the bill of sale. It may be sworn before a Master of either division of the High Court or before any of the Commissioners for taking affidavits, of whom there are many among the solicitors in town and country.

VIII. AFFIDAVIT BY ATTESTING WITNESS OF EXECUTION  
OF BILL OF SALE.

In the High Court of Justice.

Queen's Bench Division.

I, E. F., of , make oath and say as follows:

1. The paper writing hereto annexed and marked\* is a true copy of a Bill of Sale, and of every schedule or inventory thereto annexed or therein referred to, and of every attestation of the execution thereof as made and given and executed by

2. The said Bill of Sale was made and given by the said on the day of one thousand eight hundred and

3. I was present and saw the said duly execute the said Bill of Sale on the said day of one thousand eight hundred and

4. The said resides at† and is a [occupation].

5. The name subscribed to the said Bill of Sale as that of the Witness attesting the due execution thereof is in the proper handwriting of me this Deponent.

6. I am a [occupation], and reside at

7. Before the execution of the said Bill of Sale by the said I fully explained to h the nature and effect thereof, and after such execution duly attested the same.

Sworn at this  
day of one  
thousand eight hundred  
and . Before  
me,

A Commissioner for Oaths.

\* Or "produced and shown to me at the time of swearing this my affidavit and marked etc."

† Give residence and occupation at the time of swearing.

21. The Act requires the residence and occupation of the grantor and of every attesting witness to be given. I have said "description" because a man who is independent of an occupation and follows none is allowed to be described as a "gentleman," or by his higher rank.

The residence and occupation must be given as they are at the swearing of the affidavit and must not be stated as in the bill of sale if any change has taken place since.\*

Where there is more than one grantor, the residence and occupation of each must be given, and the like where there is more than one attesting witness.

Where there is a second attesting witness, the following affidavit may be made by one of the two:—

#### IX. AFFIDAVIT BY ONE OF TWO ATTESTING WITNESSES.

*[Omit clauses 5 and 6 of the last preceding form and insert]*

5. I and G. H. witnessed and attested the execution of the said bill of sale and the name E. F. subscribed to the form of attestation at the foot or end thereof is my name and written by me and the name G. H. subscribed to the said form is the name of the said G. H. and written by him, and I reside at *[residence]* and am a *[occupation]* and the said G. H. resides at *[residence]* and is a *[occupation]*.

E. F.

Sworn, etc.

Where the affidavit is made by a person who saw the bill of sale given and executed but did not attest, he may depose as follows:—

\* When the time allowed for filing was 21 days instead of seven, as now, it oftener happened that the grantor changed his address or occupation before the instrument was filed, and the "gentleman" of the bill of sale had to become the commission agent, or something else, of the affidavit, or the latter would be wrong.

A wrong number in a street has been held fatal; but a mistake which cannot mislead is not. A house in Blackfriars was described as in Middlesex, instead of London, and a farm within the bounds of the City of Chester was described as in the County, but the affidavits were held sufficient. A man's residence is not necessarily where he sleeps. Two partners, printers, who did their business at an office in Blackfriars were rightly described as residing there, though each had a separate home.

The residence and occupation of every attesting witness must be given; but directors who only sign to authenticate the seal of a company are not attesting witnesses.

X. AFFIDAVIT OF EXECUTION OF BILL OF SALE BY ONE WHO DID NOT ATTEST.

[*Follow clauses 1 and 2 of the last preceding form but one.*]

3. The execution of the said bill of sale was witnessed and attested by S. T. who resides at [*residence*] and is a [*occupation*] and who subscribed the form of attestation at the foot or end of the said bill of sale.

E. F.

Sworn, etc.

22. Though I am not dealing with bills of sale except where they are securities for money, it is right to mention that, before the Act of 1882 came into force, every bill of sale was required by the Act of 1878 to be executed in the presence of a solicitor who was to explain the instrument to the grantor and to state that fact in his attestation. The form of attestation for all bills of sale used to be as follows:—

XI. ATTESTATION OF BILL OF SALE PRIOR TO ACT OF 1882.

Signed, sealed and delivered by the said A. B. [and C. D.] in the presence of me the undersigned, a solicitor of the Supreme Court, who, before such execution by the said grantor [*or grantors*] read over these presents and explained their effect to him [*or them*].

J. S. Solicitor

of No. 1 Gallows-gate, York.

[*No conditional bill of sale needs a Solicitor's attestation now. Act of 1882, sec. 10.*]

XII. AFFIDAVIT FOR RENEWAL OF REGISTRATION OF BILL OF SALE. [*Act of 1878, s. 11, and Schedule.*]

In the High Court of Justice  
Queen's Bench Division.

I                      of                      do swear that a Bill of Sale bearing date the           day of [*insert the date of the bill*] and made between [*insert the names and descriptions of the parties in the original bill of sale*] and which said bill of sale [*or a copy of which said bill of sale as the case may be*] was registered on the           day of [*insert date of registration*] is still a subsisting security.

Sworn, etc.

XIII. ORDER TO REGISTER OR RE-REGISTER A BILL OF SALE.

In the High Court of Justice  
Queen's Bench Division.

The Hon. Mr. Justice                      Judge in Chambers.

In the matter of a Bill of Sale made between A. B. and C. D.

dated the       day of [*month and year*] and registered\* the day of [*month and year*].

Upon the application of       and upon reading the affidavit of       filed this       day of [*month and year*]. It is ordered that the time for registering [*or re-registering*] the said Bill of Sale be extended until the       day of       inclusive, but this order to be without prejudice to the rights of parties acquired prior to the time when such Bill of Sale shall be actually registered [*or re-registered*].

Dated this       day of [*month and year*].

#### XIV. CONSENT BY GRANTOR TO ENTRY OF SATISFACTION.†

In the High Court of Justice  
Queen's Bench Division.

I, C. D. of       being the grantor and the person entitled to the benefit of a Bill of Sale dated the       day of [*month and year*] and made between A. B. of the       Mills near Bradford yarn-spinner of the one part and me the said C. D. [therein described as of       gentleman] of the other part securing to me the payment of £1000 and interest thereon and registered the       day of [*month and year*] hereby consent to satisfaction being entered on the copy of the said bill of sale, the said sum and interest being discharged.

Dated this       day of [*month and year*].

C. D.

Witness S. T.

#### XV. CONSENT BY TRANSFEREE‡ TO ENTRY OF SATISFACTION. „

In the High Court of Justice  
Queen's Bench Division.

I, G. H., of No. 1 Red Lion Square in Middlesex, stationer,

\* Omit these words if the application is to register for the first time.

† See the remarks preceding form ii on entry of satisfaction. There must be an affidavit of C. D.'s signature to the consent and that he is the person named as grantee in the bill of sale and is the person entitled to the benefit of the security. If the affidavit is made by the witness who attested C. D.'s signature, and that witness is a solicitor, the satisfaction will be directed by the Registrar (the papers being otherwise correct) as of course. Under special circumstances the Registrar may accept any other deponent, if satisfied that he is a proper person to attest and verify the signature and consent.

‡ This consent must be accompanied by an affidavit of G. H.'s signature to the consent and making an exhibit of the instrument of transfer ("now shown to me and marked A.") and that he is the G. H. who was party or transferee to the transfer and has ever since exercised the rights of the grantee under the bill of sale and has not transferred it and is the person solely entitled to the benefit of it. The best person to make the affidavit is G. H. himself.

being the person solely entitled to the benefit of a Bill of Sale dated the            day of [*month and year*], made between A. B., of            , yarn-spinner, of the one part, and C. D., of            , commission agent, of the other part, securing to the said C. D. payment of £1000 and interest thereon, and registered the            day of [*month and year*], which said Bill of Sale was transferred to me by an instrument of transfer dated the            day of [*month and year*], and made between the said C. D. of the one part and me the said G. H. of the other part, hereby consent to satisfaction being entered in respect of the said Bill of Sale, the said sum and interest being discharged.

Dated the            day of [*month and year*]

G. H.

Witness E. F.

#### XVI. SUMMONS FOR ENTRY OF SATISFACTION ON A REGISTERED BILL OF SALE.

In the High Court of Justice

Queen's Bench Division.

In the matter of a Bill of Sale by A. B. to C. D., dated the            day of [*month and year*] and registered on the            day of [*month and year*].

Let all parties concerned attend the Registrar of Bills of Sale at the Central Office, Royal Courts of Justice, London, on the            day of [*month and year*] at            o'clock in the \*noon on the hearing of an application on the part of            that satisfaction be entered on the above-mentioned Bill of Sale.

Dated the            day of [*month and year*].

This summons was taken out by

E. F. of

To

[*name of person required to attend*].

#### XVII. ORDER FOR ENTRY OF SATISFACTION.

In the High Court of Justice.

Queen's Bench Division.

In the matter of a Bill of Sale, etc. [*follow heading of summons*].

Upon hearing            and upon reading the affidavit of

It is Ordered that satisfaction be entered on the above-mentioned Bill of Sale.

Dated the            day of [*month and year*].

\* Here put "fore" or "after" before "noon."

## DEPOSITS.

23. In the case of deposit, possession is of course given, and, therefore, as the goods do not remain on the premises of the person depositing them, nor are otherwise in his *apparent* possession, the memorandum of deposit is not required to be filed, as neither is a bill of sale under the like circumstances.

It is not necessary for a person to be a licensed pawnbroker in order to take this sort of security for money due, nor unless money is actually advanced on the security, and not even then if the transaction is an isolated one. The following instruments are examples of memorandums of deposit:—

XVIII. \*LETTER GIVING A LIEN ON GOODS AS SECURITY,  
WITH POWER OF SALE.

[Date.]

To C. D.,—I herewith deposit with you† the following goods, namely [*here give list of goods*], as a security for £        to be paid one calendar month hence, and, if you are not then paid, you may sell, and repay yourself out of the proceeds, first the expenses of sale and then the debt.

Yours, etc., A. B.

XIX. ‡AGREEMENT DEPOSITING GOODS AS A SECURITY,  
WITH POWER OF SALE.

Agreement made the        day of [*month and year*], between A. B., of       , and C. D., of       .

The said A. B., having this day deposited at his risk, with the said C. D., the following goods, namely [*here give list of goods*], as a security for the payment of £       , § and interest, on the        day of [*month and year*], it is agreed that, in default of payment, the said C. D., after        days notice in writing, may sell the same goods, or any part thereof, by auction or otherwise, towards payment of the said principal

\* This requires no stamp, being neither an agreement nor a mortgage.

† If the goods are numerous, say, “the goods mentioned in the following inventory, and then give a list headed, “Inventory,” at the end of the letter. • If the inventory cannot be contained on the same sheet, omit “following” and say, “hereto annexed.” The inventory should be signed by the depositor.

‡ Agreement Stamp.

§ If the deposit is to secure payment of a bill, say here, instead of the sum and day of payment, “of a bill for £       , at        months, drawn this day by the said C. D. upon, and accepted by, the said A. B.,” or otherwise describe the bill.

sum and interest, and of the expenses of sale and insurance, but until such default no such sale is to take place, nor is any action or suit to be brought to enforce payment of the said sum and interest.

A. B.  
C. D.\*

XX. †AGREEMENT GIVING A GENERAL LIEN, WITH POWER OF SALE.

Agreement made the            day of [*month and year*], between A. B., of           , and C. D., of           .

1. In consideration of the promise of forbearance, hereinafter contained, on the part of the said C. D., the said A. B. agrees to give him a general lien on all property that may at any time be in his possession belonging to the said A. B., or to any person on his account, and that such general lien shall at all times be a security to the said C. D., his executors and administrators, for all moneys that may from time to time be due from the said A. B. to the said C. D., or to the said C. D. and any partner or partners of his in his business of a           , and that, if at any time the sum of £            shall be due as aforesaid, the said C. D., his executors and administrators, may, after seven days' notice in writing, sell the whole of the same property or any part thereof, by auction or otherwise, towards payment of such sum and interest, and of the expenses of sale and insurance.

2. But unless the sum of £            shall be due, as aforesaid, no such sale is to take place, and, after the said sum shall be due, no action or suit shall be brought for the recovery of the same or any part thereof until after the sale of any such property, as aforesaid.

A. B.  
C. D.

An Equitable Mortgage by deposit of title-deeds will be found in Class IX.

24. If it is desired to deposit bills of exchange or promissory notes receivable by way of security, endorse them so as to make them payable to bearer and give a letter of lien like the letter given above, saying, "bills" instead of "goods," and "realise" instead of "sell."

25. The deposit of a share-warrant to bearer is a good security, but the deposit of a share certificate with a blank transfer is not so until the person to be secured presents the transfer to the company and gets himself

\* The agreement should be executed in duplicate, and each should keep one part.

† Agreement Stamp.

registered as a shareholder, which it is not worth his while to do unless the shares are fully paid up and likely to be always saleable. If the lender does not get registered, he runs the risk of the bankruptcy of the borrower, and of his trustee in bankruptcy claiming the shares; while if the lender gets himself registered, he incurs the burden of calls if the shares are not fully paid up and, in any case, of accounting for any dividends he receives. The borrower at the same time runs the risk of the lender's bankruptcy and the trouble of contesting a claim by his trustee.

A better plan is to transfer the shares into the joint names of lender and borrower, and to sign an instrument, of which notice should be given to the company, containing the terms of the loan, and providing that the dividends are to be the borrower's property until default and giving power to the lender to sell upon default and, even without default, to take advantage of a great rise in the price of the shares and discharge the security. This may be done in the following form :\*—

#### XXI. MEMORANDUM OF MORTGAGE OF SHARES.

Memorandum made this                      day of [*month and year*].

The shares numbered 101—150 inclusive, in the Indian Tea Company, Limited, have been this day transferred by A. B., of                      into the names of himself and of C. D., of                      as security to C. D. for the repayment with interest, as hereinafter mentioned, of £                      , this day lent by him to A. B. on the terms following :

Interest at                      per cent. per annum, to be paid quarterly on the first day of January, April, July, and October respectively until the first day of July, 18                      , when the principal, with the interest then due, is to be repaid, and thenceforth until the same is actually repaid, and if any of the said days falls on a non-business day, the payment then due is to be made on the next business day thereafter.

Until default by A. B. all dividends and profits in respect of the shares shall belong to him; but after default C. D. may receive the same on account first of interest and then of principal.

At any time after                      weeks' default by A. B. in payment of interest or principal, C. D. (without prejudice to his other remedies) may sell as many of the shares as shall be required to discharge the principal and interest then due and the expenses of sale. And, whenever the shares reach the price of

\* The only risk attaching to this form, as regards the lender, is that he may die and the borrower stand solely possessed of the *legal* right to the shares. A policy of insurance will meet this difficulty.



£ each, the said C. D. shall, irrespective of default, sell enough of the shares to realise the principal and interest to the day of sale and the expenses of sale, and shall discharge this security.

For all transfers and dealings with the shares, and for the reception of all dividends and profits in respect of them, A. B. confers on C. D. authority to affix the name [and seal\*] of A. B. to any necessary or usual documents.

When the principal and interest and the expenses (if any) are discharged, C. D. is to pay over any balance to A. B., and, at the expense of A. B., to sign or execute any instruments and do any acts and things that may be required for vesting in A. B. solely, or as he may direct, the shares, or such of them as may be unsold.

In witness whereof the said A. B. and C. D. have hereto set their hands [and seals†] the day and year first above written.

A. B.

C. D.

Signed [sealed and delivered‡] by the said A. B. and C. D. in the presence of me,

E. F.

[Residence and occupation.]

26. The deposit of a policy of life assurance is almost worthless as a security; for the person to be secured is required by the Policies of Assurance Act, 1867, to have an actual assignment, and to give notice of it to the Assurance Company if he would acquire any interest in the policy.

A better security for a loan of money is an assignment of a policy on the life of the borrower, of which mortgage, and of the necessary notice to the Company or person by whom the policy is granted, examples are here given.

## XXII. †MORTGAGE OF A LIFE POLICY.

This Indenture made the            day of [month and year] between A. B., of           , hereinafter called the mortgagor, of the one part, and C. D., of           , hereinafter called the mortgagee, of the other part, Witnesseth as follows:

1. In consideration of £            paid by the mortgagee to

\* If the transfers of shares in the company are required to be under seal, the words in brackets will be used and this memorandum must then be under seal.

† See preceding note.

‡ Notice of this assignment must be given to the company by which the policy was granted (see Form xxv), otherwise the person who takes the assignment will have no right to recover on the policy.

the mortgagor, the receipt whereof he hereby acknowledges,\* the mortgagor covenants with the mortgagee, his executors and administrators, that he the mortgagor, his executors or administrators, will, on the       †day of [*month and year*] pay to the mortgagee, his executors, administrators or assigns the said sum of £        with interest then due at the rate of £5 per cent. per annum.

2. For the consideration aforesaid the mortgagor assigns to the mortgagee a policy of Insurance for £        on the life of the mortgagor granted to the said mortgagor on the        ‡day of [*month and year*] by the        Company and numbered        with all moneys ultimately payable thereon and all benefits and bonuses, present and future, arising therefrom.

3. Provided that if the foregoing covenant shall be satisfied the mortgagor, his executors, administrators or assigns, shall be entitled at his and their respective costs to a re-assignment of the policy hereby assigned.

4. On interest being six weeks in arrear, or on giving six calendar months' written notice to the mortgagor, the holder or holders of this security may sell or surrender to the said Company the said policy or any policies effected in lieu thereof as hereinafter mentioned, dealing with the same, as regards the purchaser's protection, as absolute owners thereof, and paying to themselves the expenses of such sale or surrender and the sum due upon this security, and paying the balance to the mortgagor, his executors, administrators or assigns.

5. The mortgagor covenants with the mortgagee that he the mortgagor is entitled to execute this assignment of the premises free from incumbrances, and that he and all necessary parties will, at the cost of his estate, do all acts required for perfecting such assignment and effecting the recovery of the premises.

6. And that he, his executors or administrators, will pay interest after the rate aforesaid on all principal sums continuing secured hereon by two equal half-yearly payments on the        day of [*month*] and on the        day of [*month*] in every year during the continuance of this security. And will repay to the said mortgagee, his executors, administrators or assigns, on demand, with interest at the rate aforesaid, all costs, charges and expenses incurred by him or them for keeping up the said policy or effecting and keeping up any policy substituted for the same as hereinafter provided; all which costs, charges, and expenses are hereby made a charge on the policy hereby assigned and on any policy effected in lieu thereof, as hereinafter provided; And that the mortgagor will pay the premiums on the policy hereby assigned when due, and will do or suffer nothing

\* Take a receipt on the back of the deed. The receipt requires no stamp.

† Usually six months from the date of the mortgage.

‡ Date of the policy.

whereby the same may become void, voidable or lapsed, and in any such event will at his own costs do and suffer all acts and things to enable a policy in lieu thereof to be effected, and the mortgagee, his executors, administrators, and assigns may, unless the receipt for the current year's premium is produced to him or them, effect such insurance in any office.

7. Provided that all the covenants herein contained shall apply to any such substituted policy or policies in the same manner as to the premises hereby assigned.

In Witness whereof the said parties have hereto set their hands and seals the day and year first above written.

A. B. [*Seal.*]

C. D. [*Seal.*]

Signed etc. [*follow one of the forms of attestation given in*

E. F.

[*Residence and occupation.*]

### XXIII. ASSIGNMENT OF LIFE POLICY BY INDORSEMENT.\*

I, A. B., of , in consideration of £250 this day paid to me by C. D., of , do hereby assign to the said C. D., his executors, administrators, and assigns, the within policy of assurance granted the day of [*month and year*] by the Union Assurance Company for £1000 on my life, at the annual premium of £ payable as within mentioned, and numbered and all present and future benefits thereof and bonuses thereon.

In Witness whereof I have hereto set my hand [*and seal*] this day of [*month and year*].

A. B. [*Seal.*]

\* In accordance with the form given in the Policies of Assurance Act, 1867. To convert this absolute assignment into one by way of security, make it under seal and, before the words "In witness," insert as follows:—"I make this assignment to secure to the said C. D., and I covenant with him to pay him, £250 on the day of [*month and year*] with interest then due at the rate of ten per cent. per annum and in the meantime and during the continuance of this security to pay him interest at the rate aforesaid quarterly on the usual quarter days and to pay the premiums upon this policy when due and to do nothing whereby the same shall become void, voidable or lapsed. And, upon default for six weeks in payment of principal or interest as aforesaid or upon the expiration of a six calendar months notice in writing to me, I authorize the said C. D. his executors administrators or assigns to surrender or sell the said policy and to receive out of the proceeds the expenses of surrender and sale and the expenses (if any) of keeping up the said policy and the sum then due upon this security, paying the balance to me, my executors administrators or assigns."

As to the notice which must be given of this assignment, see Form xxiv and n.

Signed [sealed] and delivered by the said A. B. in the presence of me,

E. F.

[*Residence and occupation.*]

Received of the said C. D., on the day and year last above mentioned, the said sum of                      pounds.

A. B.

Witness E. F.

#### XXIV. NOTICE TO THE INSURANCE COMPANY OF THE ASSIGNMENT.

\*To the                      Company their Directors and Secretary,  
[*Date and*

Gentlemen,

Be pleased to take notice that, by deed [*or instrument*] dated the                      day of [*month and year*], the policy granted by you upon the life of A. B., of                      , and numbered                      , was assigned by him to me to secure the sum of £                      and interest at the rate of £                      per cent. *per annum* [*or in consideration of* £                      paid as purchase-money].

I am, Gentlemen,

Your obedient servant,

C. D.

#### BONDS.

27. A bond bears little resemblance to any other written instrument. It practically consists of two parts, the binding part, and the condition, or defeazance. The first part, however, is that from which the instrument

\* Preserve a copy of this notice with a memorandum of the date of the delivery or posting. By "the Policies of Assurance Act, 1867," a written notice of the date and purport of the Assignment must be given to the Assurance Company at its *principal place of business* (or if there are more than one, at one of them) in England, Scotland or Ireland. The company is bound to state its principal place or places of business on its policies. Upon the request in writing of any person giving or sending the notice, the company is bound, on receipt of a fee not exceeding 5s., to give a written acknowledgment of the receipt of the notice under the hand of its principal officer, which is to be conclusive evidence against the company.

The time at which the notice is given regulates the priority of all claims under assignments of the policy. And if, before the receipt of the notice, the company *bonâ fide* pays the sum insured or any bonus, the payment is good against the assignee giving the notice.

This notice is necessary by whatever instrument the policy is assigned and whether by way of security or not.

When the assignment is not under seal, do not call it a "deed" in the notice, but say "by an instrument."

derives its name and would alone constitute a bond. It is a statement, or confession usually under seal, by which the person who makes the bond (called the obligor) declares that he, or that he and his heirs, is, or are, bound to another person (called the obligee) in such and such a sum. This confession, when signed and sealed by the obligor, constitutes a debt to the obligee, and, unless something more were added, there would be no way of getting rid of the debt except paying it. Here comes the use of the condition or defeazance, which consists of a declaration that if the obligor does something, then the above-written obligation is to be void. The name defeazance is given to this part of the instrument because it declares under what circumstances the former part is to be void or *defeated*. The sum secured by the binding part, or obligation, is called the penalty, and is usually double the sum of money which the obligor is to pay as the condition of the obligation being void; or is double the estimated value of the act which he is to perform, as the case may be.

Thus, if, on my giving up my share in my business in favour of my partner, it is arranged that he is to indemnify me against the debts of the firm amounting to about £500, he executes a bond acknowledging that he owes me £1000, and I sign the defeazance declaring that if he shall keep me indemnified from the claims in question, the above-written bond or obligation shall be void.\* See a form given for this purpose in Class IV. The defeazance must of course, vary according to circumstances. The object of the following forms is to show the variations required according as there are one or more obligors and one or more obligees.

#### XXV. BOND BY ONE TO ONE TO SECURE MONEY AND INTEREST.

Know all men by these presents, that I, A. B., of \_\_\_\_\_, firmly bind myself to C. D., of \_\_\_\_\_, his executors, administrators, and assigns, for the payment to him or them of the penal sum of £ \_\_\_\_\_ sterling. Dated this \_\_\_\_\_ day of [month and year].

A. B. [Seal].

The above-written obligation is conditioned to be void if the

\* The plan above mentioned is the common one. Perhaps a better way would be for the signature and seal of the obligor to be placed at the foot of the defeazance instead of at the foot of the obligation, and then it would be unnecessary for the obligee to sign at all. This plan is sometimes adopted.

above-bounden A. B., his heirs, executors, or administrators, on the       day of [*month*]\* now next ensuing, shall pay to the said C. D., his executors, administrators, or assigns, the sum of £       sterling, with interest at the rate of £       for a Hundred Pounds by the year, from the day of the date hereof.

C. D.

#### XXVI. THE LIKE FROM TWO TO ONE.

Know all men by these presents, that we, A. B., of       , and C. D., of       , and each of us, firmly bind ourselves unto E. F., of       , his executors, administrators, and assigns, for the payment to him, or them, of the penal sum of £       sterling. Dated the       day of [*month and year*].

A. B. [*Seal*].

C. D. [*Seal*].

The above-written obligation is conditioned to be void if the above-bounden A. B. and C. D., or either of them, their, or either of their heirs, executors, and administrators, on the       day of       [*follow the last preceding form of condition*].

E. F.

#### XXVII. THE LIKE FROM THREE TO ONE.

Know all men by these presents, that we, A. B., of       , C. D., of       , and E. F., of       , and every one † and every two of us, firmly bind ourselves, jointly, severally, and respectively, unto G. H., of       [*follow the last preceding form of bond*].

A. B. *Seal*

C. D.

E. F. *Seal*.

The above-written obligation is conditioned to be void if the above-bounden A. B., C. D., and E. F., or any of them, their, or any of their heirs, executors, or administrators [*follow the form of condition in Form xxv*].

#### XXVIII. THE LIKE FROM ONE TO TWO.

Know all men by these presents, that I, A. B., of       , firmly bind myself unto C. D., of       , and E. F., of       , their executors, administrators, and assigns, for the payment to them of the penal sum of £       sterling. Dated this       day of [*month and year*].

A. B. [*Seal*].

The above-written obligation is conditioned to be void if the above-bounden A. B., his heirs, executors, or administrators, on the       day of [*month*] now next ensuing, shall pay to the

\* Or omit "now next ensuing," and state the year.

† In case of a bond by four, say "and every three," and so on as the number of obligors continues.

said C. D. and E. F., or either of them, their assigns, or their or either of their executors or administrators, the sum of £  
[*follow the condition of Form xxv*].

C. D.  
E. F.

#### XXIX. THE LIKE FROM ONE TO THREE.

Know all men by these presents, that I, A. B., of ,  
firmly bind myself unto C. D., of , E. F., of , and  
G. H., of , their executors, administrators, and assigns,  
for the payment to them of the penal sum of £        sterling.  
Dated this        day of [*month and year*].

A. B. [*Seal*].

The above-written obligation is conditioned to be void if  
the said A. B., his heirs, executors or administrators, on the  
day of [*month*] now next ensuing shall pay to the said  
C. D., E. F., and G. H., or any of them, their or any of their  
executors or administrators, the sum of £        [*follow the  
condition in Form xxv*].

C. D.  
E. F.  
G. H.

#### XXX. THE LIKE FROM TWO TO TWO.

Know all men by these presents that we, A. B., of ,  
and C. D., of , and each of us, firmly bind ourselves unto  
E. F., of , and G. H., of , their executors, adminis-  
trators, and assigns, for the payment to them of the penal sum  
of £        sterling. Dated this        day of [*month and year*].

A. B. [*Seal*].

C. D. [*Seal*].

The above-written obligation is conditioned to be void if the  
above-bounden A. B. and C. D., or either of them, their or  
either of their heirs, executors or administrators, on the  
day of [*month*] next ensuing, shall pay to the said E. F. and  
G. H., or either of them, their assigns or their or either of  
their executors or administrators, the sum of £        [*follow  
the condition in Form xxv*].

E. F.  
G. H.

#### XXXI. THE LIKE FROM THREE TO THREE.

Know all men by these presents that we, A. B., of ,  
C. D., of , and E. F., of , and each and every two  
of us, firmly bind ourselves unto G. H., of , I. J., of ,  
and K. L., of , their executors, administrators, and assigns,  
for the payment to them of the penal sum of £        sterling.  
Dated this        day of [*month and year*].

A. B.  
C. D. [*Seal*]  
E. F. [*Seal*]

The above-written obligation is conditioned to be void if the above-bounden A. B., C. D., and E. F., or any of them, their or any of their heirs, executors or administrators, on the day of [month] now next ensuing, shall pay to the said G. H., I. J., and K. L., or any of them, or their assigns, or their or any of their heirs, executors or administrators, the sum of [follow the condition in Form xxv].

**XXXII. \*BOND BY TWO SURETIES TO A FIRM TO SECURE FIDELITY OF CLERK.**

Know all men by these presents that we, A. B., of , and C. D., of , and each of us, firmly bind ourselves unto E. F., of , and G. H., of , their executors, administrators, and assigns, for the payment to them of the penal sum of £ sterling. Dated this day of [month and year].

A. B. [Seal].

C. D. [Seal].

Whereas the said E. F. and G. H. have agreed to admit S. T. into their service as clerk, and to continue him in such service, subject to three months' notice in writing on either side, on our becoming sureties for his faithfully serving and accounting, in manner hereinafter mentioned, so long as the said S. T. continues in such service; and whereas by the above-written obligation, we have become sureties accordingly;

Now, the above-written obligation is conditioned to be void if the said S. T. shall faithfully serve, and from time to time and at all times account for, and pay over to the said E. F. and G. H., or the survivor of them, their or his executors or administrators, and other the person or persons who shall have become partner or partners with them, or either of them, or his or their executors or administrators, all moneys, securities for money, goods and effects whatsoever, which he, the said S. T., shall receive for their or any of their use, or for the use of any person or body politic, to whom they or either or any of them shall be accountable, or which shall be entrusted to his care by them, or either or any of them, or by or for any person or body politic to whom they or either or any of them shall be accountable. And shall not embezzle, withhold, destroy, or anywise injure any such moneys, securities for money, goods and effects as aforesaid, or any books, papers, writings, goods, or effects of them, or either or any of them. Provided always that each of the said sureties is not to be separately liable, nor are his executors or administrators, for more than half of the penal sum secured by the above-written obligation. And also that each of said sureties may put an end to his liability on the above-written obligation by giving to the said E. F. and G. H., their executors or administrators, six months' notice in writing

\* See a form of guarantie for the same purpose a few pages further on.



of his intention so to do, and shall be free from liability for any event or default happening after the expiration of such notice.

E. F.  
G. H.

## GUARANTIES.

28. A guarantie is a contract or promise, "to answer for the debt, default, or miscarriage of another," and by the Statute of Frauds, passed in the 29th of Charles II., it is required to be in writing, and signed by the guarantor, or some person authorised by him. Thus, if I agree that, if a shopkeeper will trust a customer, I will see that the bill is paid, or, if I agree that, if A. will lend his horse to B., the latter shall return him safely, I am not liable unless I have signed a memorandum, embodying the terms of my promise.

29. To render me liable on such a promise as this, where it is not under seal, there must also be a consideration in the shape of some benefit given to me, or some loss or inconvenience suffered by the person to whom the promise is made. For instance, in the above cases, the trusting the customer and the lending the horse would be such a consideration. But if, when I made my promise, the goods had been already sold, or the horse lent, there would not necessarily be a consideration. There might be one, however; as, if the person to whom the promise was made gave me money for making it, or agreed to forbear to sue for the price of the goods, or for the horse.

30. Before the year 1856, this necessary element in a guarantie must have appeared on the face of the writing, and it is still desirable that it should do so; but now, if it is omitted in the writing, it may be proved by verbal evidence at the trial.

31. A guarantie may either be for answering one debt, or default, or for answering continuing debts, or defaults; as, for instance, I may make myself answerable for *any* balance that may be owing from time to time by A. to B., or for *any* negligence that may be committed by A. while in B.'s employ. These are called *continuing* guaranties, and it is prudent to limit them to a certain time and amount, or to provide that the guarantor may get rid of his liability by notice.

## XXXIII. GUARANTIE FOR A CERTAIN AMOUNT.

To Messrs. A. and B.—If you will supply S. T. with such goods as he may require I hereby guarantee that you shall be paid for them to the extent of £ . But this is not to be a continuing guarantie. Dated the            day of [*month and year*].

C. D.

## XXXIV. CONTINUING GUARANTIE FOR A CERTAIN AMOUNT, AND FOR A CERTAIN TIME.

To Messrs. A. and B.—If you will supply S. T. with such goods as he may require from time to time, I hereby guarantee that you shall be paid for them, to the extent of £ . This guarantie is to continue for [*one year*]. Dated the            day of [*month and year*].

C. D.

## XXXV. \*GUARANTIE SECURING FIDELITY OF CLERK.

To Messrs A. and B.—In consideration of your taking my son William into your employ as clerk, and so continuing him, subject to three months notice on either side, I guarantee that he shall faithfully serve you, and truly account to you for all property, writings, and securities, belonging to you, or to any one on your behalf, or to any one to whom you are accountable, and shall take due care of all such property while in his possession. This guarantie is made to your firm, †including any future partners, and is to continue as long as my said son is in the employ of such firm, but subject to a determination by six calendar months notice in writing on my part. Dated the            day of [*month and year*].

C. D.

## XXXVI. GUARANTIE FOR THE PERFORMANCE OF A CONTRACT FOR WORK OR SERVICES.

To A. B.—If you will employ C. D. under the within contract,‡ I undertake that he shall perform his part thereof, provided you perform yours. Dated this            day of [*month and year*].

E. F.

\* This will, in many cases, be as good a security as the bond given a few pages back for the same purpose. It requires an agreement stamp, 6d.

† These words should always be inserted if the guarantie is meant for the benefit of future partners.

‡ This guarantie is to be written on the back of the contract, The guarantor ought to have a copy of the contract and guarantie.

## XXXVII. GUARANTIE OF A FIRM'S ACCOUNT WITH A BANK.

To A. B. and Co., \*Bankers.

1st January, 18 .—I guarantee for a year from date the over-draft of C. D. and Co.\* for £500 with your firm.

E. F.

## XXXVIII. GUARANTIE OF A FIRM'S ACCOUNT WITH A BANK TO CONTINUE NOTWITHSTANDING CHANGES.

To A. B. and Co., Bankers.

1st January, 18 .—I guarantee the over-draft of C. D. and Co., however constituted, †with your firm, however constituted, †for £500 for a year from date, but subject to determination by three calendar months' notice.‡

E. F.

## XXXIX. GUARANTIE OF A CUSTOMER'S JOINT ACCOUNT AND SEPARATE ACCOUNT WITH A BANK.

To A. B. and Co., Bankers.

1st January, 18 .—I guarantee to your firm, however constituted, the payment of all moneys not exceeding £ that may be or become due from J. S., of , whether on his separate account or on his joint account with T. P.§ And this guarantie shall continue for a year from its date but, subject to determination by three calendar months' notice at any earlier time.

## XL. GUARANTIE FOR AN EXISTING OVER-DRAFT ONLY.||

To A. B. and Co., Bankers.

1st January, 18 .—In consideration of your forbearance for six calendar months from date to enforce payment of the amount now owing to you by J. S., of , on his account

\* Any change in either firm after the date of the guarantie will put an end to it (*Partnership Act*, 1890, s. 18); for I may be willing to be liable *for* C. D. and Co. as now constituted, but not if one dies or retires and a new partner joins, and I may be willing to bind myself *to* A. B. and Co. as now constituted, but not after any change. If the liability is to be in spite of any change in either firm, the following form should be used.

† If the guarantor wishes only to be bound *for* or *to* either firm as it stands he must omit these words after the name of that firm.

‡ If the guarantor who signs this and the following forms dies while the guarantie is running, notice of his death puts an end to the guarantie. One reason is that he is no longer alive to give the notice (*Coulthard v. Clementson* 5 Q. B. D. 42; *Offord v. Davies* 31 L. T. C. P. 319).

§ Or, if you wish to guarantee *any* amount to which J. S. is a party, say "or on any other account or accounts he has or may have with you jointly with any other person or persons."

|| The previous forms of guarantie are for guaranteeing a balance

with you (£500), I guarantee that he shall pay you the amount at or before the expiration of that time.

E. F.

XLI. CONTINUING GUARANTIE TO A BANKER FOR BILLS TO BE DISCOUNTED FOR A CUSTOMER.\*

To A. B. and Co., Bankers.

We, the undersigned, in consideration of your discounting at our request bills of exchange for Messieurs D. and Co., of , jointly and severally guarantee for the space of twelve calendar months the due payment of all such bills of exchange to the extent of £600. And we further jointly and severally undertake to make good any loss or expenses you may sustain or incur in consequence of advancing to the Messieurs D. and Co. such moneys.

E. F.      G. H.

which is increased by what is drawn out and diminished by what is paid in during the period guaranteed. But this form only binds the guarantor if the payments in during the six months do not amount to £500. If they amount to £500, no matter how much is drawn out, the guarantor is free.

If the guarantor who signs this form dies within the six months, his executor must pay what is due under it, if the banker has forborne from his remedies.

\* This was the guarantie in *Offord v. Davies (supra)*. Some discounts had been made and repaid. But, although no mention was made of the revocation of the guarantie by notice, it was held to be so revocable. The consideration only arose upon each discounting and the bankers could not make the guarantors liable by going on discounting after notice that the guarantie was at an end. In short a power to revoke a continuing guarantie by notice is assumed unless words are used which show a contrary intention.

## CLASS III.—RECEIPTS AND ACKNOWLEDGMENTS.

### *The nature of a Receipt and its Stamp.*

1. Any acknowledgment or memorandum that money has been paid is a receipt. If it is not under seal it may be contradicted or explained; but if it is under seal, or is contained in a deed, which is an instrument under seal, it is nearly always conclusive, unless obtained by fraud.

A payment may be proved without any receipt, by the oral testimony of the debtor or creditor, or any other person, and if a man has had a stamped receipt and has lost it, he may give verbal evidence of it, as of other lost documents.

2. As a general rule, every receipt for £2 and upwards requires a penny stamp, which may be either impressed or adhesive. If the latter kind be used, the person signing the receipt must write his name or initials or the name or initials of his firm, across the stamp together with the true date of his so writing, or must otherwise effectively cancel it, so that it cannot be used for another instrument or for posting. (*Stamp Act, 1891, s. 8.*) The stamp duty is to be borne by the person receiving the money, and the latter if he gives a receipt, incurs a penalty for not using a stamp, and for not obliterating an adhesive one, as above mentioned. But see section 4 in this chapter.

### *When an Unstamped Receipt can be given in evidence.*

3. On the trial of a criminal charge, a receipt, like all other instruments, is admissible without a stamp, but in a civil case it is not. The chief use which can be made of an unstamped receipt in a case of the latter kind is, that it may be put into a witness's hands to refresh his memory.\* The reason why instruments

\* Thus, suppose a person has received money, and has acknowledged its receipt in a letter unstamped, and denies the fact of the receipt upon his oath in the witness-box, although shown his own letter admitting that he has had the money, the letter cannot be

which require a stamp are not admissible without one in civil cases, is solely out of respect to the revenue laws; but, as our courts are not concerned in upholding the revenue laws of other States, it follows that a receipt given in a foreign country, where it would require to be stamped for the mere purpose of being admitted to evidence, is admissible here without a stamp.

*Of the Stamping Unstamped Receipts.*

4. An unstamped receipt may be stamped with an impressed stamp if brought to the Stamp Office within fourteen days after it shall have been given, on payment of £5 and the duty; and if brought after fourteen days, and within one calendar month, on payment of £10 and the duty; but after the expiration of one month no receipt can be stamped with an impressed stamp.\*

*Of the Obligation to give Receipts.*

5. Under the Stamp Act where the sum paid is £2 or upwards (whether paid in cash, bill, cheque or note) and a receipt is required, an obligation arises to give a stamped receipt, unless the receipt is specially exempted from duty.†

The person who gives a receipt but refuses to give a stamped receipt is liable to a penalty of £10 and, if he gives a receipt, as he may do, bearing an adhesive stamp, he is liable to a like penalty if he wilfully neglects or refuses to cancel the stamp in the manner above mentioned. If a debt or demand of £2 or upwards is acknowledged to be settled or discharged, any memorandum of such settlement or discharge must be stamped as a receipt. (*Stamp Act, 1891, secs. 101—103.*) It is no longer necessary, as formerly, for the party paying to tender a stamped paper, but the burden falls on the party receiving.

The statute does not impose an obligation to give a receipt unless it is demanded and the sum is £2 or more; but that obligation may arise in various ways, whether the sum paid amounts to £2 or not. It may arise by a statute directing a receipt to be given, or it may arise from the circumstances of the transaction, or from an express contract between the parties, or may be pre-

shown to the jury; but the witness may be subsequently charged with perjury, and then the letter, which is an unstamped receipt, may be given in evidence against him.

\* The Stamp Act, 1891, s. 102.

† See sec. 7,

sumed from an unvaried course of dealing or from the custom of a trade. For these cases an obligation may arise to give a receipt showing on what account the payment is made; but, if all that is required of a man is a receipt, he satisfies the demand by merely writing that he has received so much money, without saying in respect of what.

No one acting on his own account is bound to demand a receipt and, except as above mentioned, no one is bound to give one.

6. No one is bound to accept a receipt, nor is any one prejudiced by being given a receipt in a particular form, although if he reads it and finds it to be in a wrong form he should at once object. The rule of law is that, when the payer states at the time on what account he makes the payment, the money is to be received on that account, although the receiver may wish to appropriate it to another. Thus, if I owe money to a man for goods bought of him and also money for rent which fell due afterwards, and pay him a sum of money, saying it is for the rent, he must take it on account of the rent and must not appropriate it to the goods. If, in spite of my appropriation of the payment to the rent, my creditor insists on giving me a receipt on account of the goods, I shall not be prejudiced and his subsequent distress for the rent will be unlawful. But it will be wise of me, in reading the receipt to remonstrate and if necessary borrow his pen and draw a line through the words which he has improperly inserted and make a memorandum on the back that I have done so in his presence on the occasion of the payment.

If I make no special appropriation at the time of payment, but pay generally, the creditor may then, or within a reasonable time afterwards, appropriate the payment to any account he pleases. But, if he gives me a receipt on a particular account, he cannot afterwards appropriate the payment to another account.

#### *What Receipts are Exempt from Stamp duty?*

7. Let me caution the reader never to rely upon any unstamped entry memorandum or acknowledgment of the receipt of money, however unlike a receipt it may look either in form or words. There is no indirect way of giving a receipt so as to escape duty.

I will now mention the commonest kinds of receipts which are exempt from duty, namely those on other duly stamped instruments. They are these:—

Receipts written on any bill of exchange (which includes a cheque) or promissory note duly stamped; Receipts indorsed, written upon or contained in any instrument liable to stamp duty, and duly stamped, acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest or annuity thereby secured or therein mentioned. (See *Stamp Act, 1891, Sched. "Receipt."*)

It will thus be seen that if a mortgage, bond or other security, or any conveyance, or other instrument, is itself duly stamped, a receipt for all or any part of the consideration money or the sum secured may be inserted in the body of the instrument or written on its back or any part of it without bearing a receipt stamp. Some remaining exemptions shall be given in a note.\*

8. I may here mention that there are certain agreements which are exempt from Stamp duty, and which, therefore, may be well included in the same instrument which acknowledges the receipt of money in respect of them.

\* Acknowledgment by any banker of the receipt of any bill of exchange or promissory note, for the purpose of being presented for acceptance or payment.

Receipt given

for money deposited in any bank, or with any banker, to be accounted for and expressed to be received of the person to whom the same is to be accounted;

for any parliamentary taxes or duties or for money for the use of Her Majesty;

for money received by an officer of a public department of the state for money paid by way of imprest or advance, or in adjustment of an account, where he has no personal benefit;

for money imprested to any agent on account of the pay of the army;

for wages, pay or pension due to any officer, seaman or marine;

for the consideration for the purchase of any share in stocks or funds, whether Government, Parliamentary, E. I. Company's, India, Bank of England or Bank of Ireland, or for any dividend on them;

for any money due on an exchequer bill;

or any bill or note of the Bank of England or of Ireland;

for drawback or bounty on exportation;

for the return of Customs duties, and

Receipt indorsed on a bill drawn by the Admiralty upon the Accountant-General of the Navy.

The above exceptions are given in the Schedule to the Stamp Act, 1891; but there are others, created by other Acts, among which may be mentioned the following:—

Receipts given by any registered Building, Loan or Friendly Society to a member or by any member to the Society.

Receipts given in the administration of the estate of any bankrupt (see *Bankruptcy Act, 1883, s. 144.*)

Receipts given under the Poor Law (4 & 5 Will. 4. c. 76, s. 86.)



The commonest of these are agreements the matter of which is not of the value of £5; agreement for the hire of any labourers, artificers, manufacturers or menial servants; agreements for the sale or manufacture of any goods, wares, or merchandise;\* agreements with sailors for a coasting voyage to and from ports in the United Kingdom; agreements between Building, Loan and Friendly Societies and their members and agreements made in the course of administering a bankrupt's estate. The four first mentioned are given in the Stamp Act, 1891.

There follow some forms of receipts.

#### I. SIMPLE OR GENERAL RECEIPT.

Received of C. D.      pounds      shillings and      /, 18—.      pence.  
A. B.

#### II. RECEIPT FOR RENT.

£      1st January, 18—.      pence,  
Received from C. D.      pounds      shillings and      pence,  
being one quarter's rent of King's Mill, due Christmas Day,  
18—.      A. B.

#### III. THE LIKE BY AN AGENT.

£      1st January, 18—.      pence,  
[Follow the above and add as follows.]  
to E. F.,      A. B., his agent.

#### IV. RECEIPT FOR SALARY.

£      1st January, 18—.      pence,  
Received from C. D.      pounds      shillings and      pence,  
being one quarter's salary, due Christmas day, 18—.      A. B.

#### V. RECEIPT FOR BALANCE OF SALARY.

£      1st January, 18—.      pence,  
Received from C. D.      pounds      shillings and      pence,  
being the balance of salary due to me this day.      A. B.

#### VI. RECEIPT FOR BALANCE OF ACCOUNT.

£      1st January, 18—.      pence,  
Received from C. D.      pounds      shillings and      pence,  
being the balance of account due to me this day.      A. B.

\* The words of the Stamp Act, 1891, are "agreement, letter or memorandum." The forms numbered xi and xii therefore require no stamp beyond the receipt stamp.

## VII. RECEIPT IN FULL OF ALL DEMANDS.

£ 1st January, 18—.  
 Received from C. D. pounds shillings and pence,  
 in full of all demands.  
A. B.

## VIII. THE LIKE BY AGENT.

£ 1st January, 18—.  
*[Follow the above and add as follows.]*  
 due to E. F.  
A. B., his agent.

## IX. RECEIPT BY AGENT OF ONE TO AGENT OF ANOTHER.

£ 1st January, 18—.  
 Received from G. H. by the hand of C. D. pounds  
 shillings and pence [the balance of account] due to E. F.  
A. B., his agent.

## X. RECEIPT OF CHEQUE AND A BILL (OR NOTE).

£ 1st January, 18—.  
 Received from C. D. a cheque for £ on Messrs. X. and Y.  
 and a bill of exchange [or promissory note] for £, which,  
 when paid, will satisfy my claim for etc.  
A. B.

## \*XI. RECEIPT FOR GOODS TO BE DELIVERED.

£ 1st January, 18—.  
 Received from C. D. pounds shillings and pence,  
 the price [or on account] of bales of cloth to be delivered  
 to him at , on the day of [month and year].  
A. B.

## XII. RECEIPT FOR PRICE OF HORSE WITH WARRANTY.†

£ 1st January, 18—.  
 Received from C. D. pounds shillings and pence,  
 the price of a bay mare warranted sound and free from vice.  
A. B.

## ACKNOWLEDGMENTS.

## I. O. U.

9. An I. O. U. differs from a promissory note in being a mere acknowledgment of debt without a promise to pay. Adhere strictly to the form given below, lest the document should amount to a promissory note, or at

\* This and the following do not require any other than a receipt stamp.

† See sec. 16, *post.*, "Warranty of a Horse."

least to an agreement. In the latter case, however, there is less danger, for the duty on an agreement can be paid at any time, on payment of the penalty fixed by statute, and even at the trial, by paying the further sum of £1 to the officer of the court.\*

The form given below requires no stamp. It is not negotiable. It is merely evidence that on the 1st Nov., 18—, A. B. and C. D. came to an account, and that £100 was found to be due to the former. If the creditor's name does not appear on it, it will be *primâ facie* evidence that the debt is due to the person who produces it.

### XIII. FORM OF I. O. U.

£100 0s. 0d. London, 1st Nov., 18—.  
To A. B.

I. O. U. One Hundred Pounds.

C. D.

10. By the Statutes of Limitations no action can be brought for a debt or money demand the claim to which arose more than six years before, unless the person owing the money has given an acknowledgment or made a payment on account of principal and interest.† This enactment does not apply to a debt created by an instrument under seal, as a bond or a sealed lease; and there are one or two exceptions to it, of rare occurrence and not worth mentioning here. By a statute passed in the ninth year of George IV., c. 14 (amended by the Mercantile Law Amendment Act, 1856, s. 13), acknowledgments by a debtor, to prevent the debt being barred by lapse of time, must be in writing and signed by him or by some person authorized by him. The payment or acknowledgment may be made at any time, although six years have expired. It must be remembered, however, that, where the debt is due from more persons than one, an acknowledgment by one will only take the debt out of the statute against himself; though, if an ordinary partner were to sign in the name of the firm, I think that would be sufficient to enable his partners to be sued if they were jointly liable with him, because each known partner is agent for the firm for all dealings as to which his authority is not known to be restricted.

\* And, within 3 months from signature, the Commissioners may remit the penalty or any part thereof. (*Stamp Act*, 1891, s. 15.)

† If the person to whom the money becomes due is at the time an infant, a married woman, or a person of unsound mind, such person is allowed six years from the cessation of the disability during which to bring the action.

No particular form of acknowledgment is required. It may be as follows:

XIV. \*ACKNOWLEDGMENT TO PREVENT A DEBT BEING BARRED BY THE STATUTES OF LIMITATIONS.

[Day, month, and year.]

The principal sum of £      , with interest at £      per cent., remains due from me to C. D.

A. B.

XV. LETTER WHICH MAY ACCOMPANY A PAYMENT ON ACCOUNT.

[Date.]

Sir,—

I enclose you £      , part payment of your account down to [date of last item].†

A. B.

To C. D.

XVI. ‡ANOTHER FORM WHERE THERE ARE MUTUAL DEBTS.

[Date.]

Sir,—

The sum which you owe me for commission amounts to £      , which may go towards payment of your old account.

A. B.

To C. D.

XVII. WHERE ONE ACKNOWLEDGES FOR ANOTHER.

[Date.]

Sir,—

On behalf of §A. B., by whom I am duly authorized, I acknowledge that the sum of £      is due to you for goods supplied down to Midsummer, 18—.

E. F.

To A. B.

11. In taking an acknowledgment to pay do not be satisfied with one which is expressed to be “without prejudice.” The acknowledgment, to be of any use to you, must be either an unconditional promise to pay or a promise to pay upon a condition which you can shew has been fulfilled. If a man writes “I will pay you when I am able,” or “when I come into my property on my uncle’s death,” you must shew that he is able in the

\* These require no Stamp Duty. (9 Geo. 4., c. 14, s. 8.)

† It will be sufficient if the account be described in any other way—as “your old account”—so that what is meant is clear from the facts.

‡ This may amount both to a payment and an acknowledgment.

§ Or “of myself and A. B.” as the case may be.

one case and, in the other, that he has come into the property. A letter, saying "I owe you so much on the contract, but you are liable to me for penalties to a greater amount" is not an acknowledgment of a debt, but rather a claim of a balance.

If you receive an acknowledgment undated, you may prove the date by verbal evidence and so it will be wise to make a memorandum on the back recording the time when you receive it.

You have another six years in which to sue from the date of the last acknowledgment.

### *Infants.*

12. An acknowledgment made after coming of age of a debt incurred during infancy does not enable the person to whom it is given to sue the maker of it. No ratification of a debt or liability arising during infancy, however solemnly made and whatever consideration be given for it, can avail the person in whose favour it is written. An infant is liable for necessities supplied during infancy and, after coming of age, continues so liable, without any acknowledgment, until the remedy is barred by lapse of time. And no acknowledgment given after full age can extend this liability. See *the Infants' Relief Act, 1874*.

13. By one of the Statutes of Limitations the occupier of land or houses acquires a title against the person entitled to the immediate possession, unless rent has been paid or an acknowledgment given within the last twenty years. The form of acknowledgment may be as follows:—

### XVIII. ACKNOWLEDGMENT OF ANOTHER'S TITLE TO LAND.

[*Date.*]

Sir,—

I acknowledge that the messuage and tenement called King's Mill is occupied by me under your permission as owner thereof.\*

A. B.

To C. D.

The same kind of acknowledgment should be given for the like reason where a right of way or of common, a watercourse, or any other easement, is enjoyed by permission. The form may be as follows:—

\* This need not contain words agreeing to give up at any time or on so many months' notice. If it does so it will require the agreement stamp of 6d.

**XIX. ACKNOWLEDGMENT THAT A WAY IS NOT  
AS OF RIGHT.**

The day of [*month and year*].

I acknowledge that the way from King's Mill, over the brick-kiln close, into the highway that leads to Dayton, which is now used by me, my agents and servants, is not used as of right, but by permission of C. D.

A. B.

**XX. THE LIKE WHERE THERE IS A FOOT-WAY AS OF RIGHT.**

The day of [*month and year*].

I acknowledge that the way from the back of my premises in Carshalton-street, passing by the side of the market-garden and by the back yard of the Rodney Arms into Down-street, used by me, my agents and servants, as a foot, horse and carriage way is used as a horse and carriage way not of right, but by permission of C. D.

A. B.

14. In the case of windows we must keep in view some peculiarities arising from the law and from the nature of light which is the subject of the claim. The owner of any building may make as many windows in it as he pleases in any place. All that the law says is that, unless he has enjoyed the windows for twenty years without a year's interruption, the owner of the land which they overlook is not bound to let the light pass over his land to the windows; in other words, he may build any building or obstruction on his own land so as to shut out the light from his neighbour's windows. But if the windows have been enjoyed as above-mentioned, except by a written consent or agreement, then they are as it were the masters of the neighbouring land, and the latter is their servant to supply them with light for ever; and this will be the same though the windows were opened originally by permission, or even though a pecuniary acknowledgment is paid for the passage of light. If therefore a neighbour, without such consent or agreement, makes in his wall windows which get their light over my land, I shall, in nineteen years and a day, lose the right of building opposite the windows, unless I have obstructed them for a year,—and so on every succeeding twenty years. Now, as this would be an inconvenient thing for both parties, it would be much better to agree that if one will forbear to obstruct until he requires to build, the other will raise no obstacle to the building though it be after the lapse of twenty years' uninterrupted enjoyment. It is preferable that agreements on this subject should be

under seal. The following is an example of this agreement and may serve as a guide by which a lawyer may prepare others relating to the same subject, but of a different kind, and between parties differently situated.

#### XXI. DEED OF COVENANT CONCERNING LIGHT.

This indenture made the day of [*month and year*], between A. B. of of the one part, and C. D. of of the other part, Whereas the said C. D. is seized in fee of a house, messuage, and garden, called No. 1, Down-street, in Middlesex (hereinafter called No. 1), and the said A. B. is possessed of an adjoining house, messuage, and garden, called No. 2, Down-street, aforesaid (hereinafter called No. 2), for an unexpired term of about 75 years, And Whereas the said C. D. has recently opened three windows in a portion of No. 1, overlooking and deriving their light over a portion of the garden and yard of No. 2; and whereas the said A. B. does not desire that the said C. D. his heirs or assigns, should acquire an indefeasible right to derive light for the said windows over any part of No. 2, during the residue of the said term, but does not desire to obstruct such light for a year, in order to prevent such right accruing, and whereas the said C. D. only desires that he, his heirs and assigns, shall enjoy the said light till an interruption thereof should arise from new buildings, or other permanent improvements on No. 2, Now, this indenture witnesseth as follows :

1. The said A. B. for himself, his heirs, executors, administrators and assigns, covenants with the said C. D. his heirs and assigns, that the said A. B. his executors, administrators and assigns, will not obstruct the light to the said windows, save by new buildings, or other permanent improvements on No. 2.

2. And the said C. D., for himself, his heirs and assigns, covenants with the said A. B., his executors, administrators and assigns, that the said C. D., his executors, administrators or assigns, may, at any time hereafter, by buildings, or other permanent improvements on No. 2, obstruct the light to the said windows without let, hindrance, or complaint on the part of the said A. B., his heirs and assigns.

In witness whereof the said parties have hereto set their hands and seals the day and year first above written.

Signed, sealed and delivered,  
by the said A. B. and C. D.  
in the presence of  
S. T.

“

A. B. [*Seal.*]  
C. D.

[*Residence and occupation.*]

If the object is merely to protect the land over which the windows look, so as to prevent its being liable to

supply the neighbouring habitation with light, it may be effected by a written consent given by the owner of the land which is overlooked to the person who is having the windows made, and by an acknowledgment on the part of the latter of such consent. The object of the consent is not to save the owner of the windows from liability, for, as above stated, he incurs none; but it is to protect the land over which the light is derived by showing that the right began by consent, so that twenty years' enjoyment does not bar the right to obstruct. For this reason the consent should always be acknowledged, and for that purpose the consent and acknowledgment may be included in the same instrument, to be signed in duplicate, one for each party, as follows:

XXII. CONSENT TO THE MAKING OF WINDOWS, WITH  
ACKNOWLEDGMENT.

The windows opened [*or to be opened*] by C. D. on that side of his house which faces A. B.'s garden are opened by the written consent of A. B. testified by his signature hereto.

Dated the       day of [month and year].

A. B.                      C. D.

Or the consent and the acknowledgment may be separate, as follows:

XXIII. CONSENT TO THE MAKING OF WINDOWS.

I consent that C. D. may open windows in that side of his house which faces my garden.

A. B.

1st January, 18—.

XXIV. ACKNOWLEDGMENT THAT WINDOWS WERE MADE  
BY CONSENT.

I acknowledge that the windows opened by me in that side of my house which faces A. B.'s garden were so opened by the written consent of A. B.

C. D.

1st January, 18 .

WARRANTY OF HORSE.

15. Any declaration made during the treaty for sale, by the party selling, in favour of the animal's soundness or qualities (not being mere praise or on a point obvious to a common observer) is a warranty. But, if the agreement for sale, or the warranty, is afterwards re-



duced to writing, no verbal statement which is omitted from the writing will be of any account; for the writing is regarded as being a correction of what is said.

A purchaser, ignorant of the instructions you have given to the stable-keeper, auctioneer, servant or agent employed to sell, can hold you bound by any warranty made by that person, whether written or verbal, even though contrary to your instructions, leaving you to your remedy over against the man whom you employed.

A warranty, unless expressed as applying to the future, speaks of the horse as he is at the time of sale.

It is better that a warranty should be in writing in order to prevent dispute as to its terms. It may accompany the receipt and needs no stamp beyond the receipt stamp. If separate from the receipt, it may be signed by the principal, or by his agent or servant and, if by the latter, either in his own name or his principal's, and will be equally binding if signed in a fictitious name.

If the seller says he never warrants but the horse is sound as far as he knows, he should not refuse to sign the following form:—

#### XXV. RECEIPT WITH QUALIFIED WARRANTY OF A HORSE.

Received the [date] of A. B. Fifty pounds for chesnut cob *Chisel* sound so far as I know.\*

C. D.

The following form of receipt with an absolute warranty will be found convenient in many cases. It is easy to omit what is inapplicable.

#### XXVI. RECEIPT WITH ABSOLUTE WARRANTY.

Received the [date] of A. B. Sixty pounds for grey gelding *Volunteer* warranted only six years old, sound, free from vice, and quiet to ride or to drive either in single or double harness, and to carry a lady well.

C. D.

Much litigation may be saved by stating an exception, even though obvious, and sometimes it is wise to provide for the return of the horse within a stated time on the certificate of a person named, as in the following form:—

#### XXVII. RECEIPT, QUALIFIED WARRANTY AND PROVISION FOR RETURN.

Received the [date] from A. B. One hundred pounds for

\* If it can be shewn that the seller knew of any unsoundness, the buyer can maintain an action on this warranty.

the bay gelding *Numa* warranted sound (save a splint on the off fore-leg which has not impeded action), free from vice (except a little shying), good for saddle or harness. [To be returned within 14 days if Mr. R. S. of        or Mr. S. T. of        certify by writing in what this warranty is broken.\*]

C. D.

\* The words in brackets [ ] may be added to the previous warranty or any other.

## CLASS IV.—PARTNERSHIP.\*

1. Partnership is not the mere joint-ownership of goods. My having a share of a horse, or of an acre, does not make me a partner with my co-owner. So, if I am assignee of a bankrupt member of a firm, I become co-owner of the stock, but am not thereby a partner of the solvent members.

But partnership consists in the *contract* between one or more to carry on a business for their mutual benefit, and it is by no means necessary that joint property should be used. Two surgeons or surveyors may be partners, each using his own instruments and having no joint capital. And, where property is used jointly or in common, it may be used by both owners for the same purposes with or without a partnership. Thus, if I agree with my co-owner of the horse that we shall work him alternately at the plough, we are not partners; but if we use him jointly for jobbing and posting, we are partners. In the same way my co-ownership of the acre might naturally lead to a partnership with my co-owner in the business of a market gardener.

2. Now, a partnership having begun, certain incidents follow, the most important of which is, that my fellow becomes my agent for making contracts necessary to the business. For example, he may pledge my credit as well as his own for corn for our job-horses; so if we are in trade, he may sign bills and notes in the name of the firm, so as to be binding on me; unless in the particular trade it is the custom to manage without bills. I say that the agency by which he may bind me is limited to things necessary, or apparently necessary, for the business, as, for instance, if we are schoolmasters, he can bind me for the price of books and stationery, and if we are surgeons, for the price of instruments, but not by bills or notes. But if we turn druggists and set up a shop, he may then bind me by bills and notes made in the firm's name.

3. For this reason it is that in articles of partnership it is often agreed that this power shall not be exercised,

\* This introduction is necessarily imperfect from its brevity. See the law of partnership more fully stated in my book on that subject, published by Effingham Wilson & Co.

or only within certain limits, and that if it be exercised, it shall constitute a ground for dissolution. (See Form iii.) But such an agreement in no way limits the liability of the partners to persons dealing in ignorance of the restriction.

4. The receipt of the profits of a business by a person who knows them to be such is not *conclusive* evidence that the business is carried on by that person's authority, and that he is, therefore, subject to its liabilities. And in particular none of the following things will make a man liable as a partner without further evidence that the business is carried on for him and by his authority :

(1) The receipt of a debt or liquidated amount by instalments or otherwise out of the accruing profits of the business ;

(2) A contract for the remuneration of a servant or agent by a share of the profits ;

(3) The receipt by the widow or child of a deceased partner of an annuity paid out of the profits ;

(4) The receipt by way of annuity or otherwise of a portion of the profits of the business in consideration of the sale of the goodwill ;

(5) The advance of money by way of loan to a person engaged, or about to engage, in any business, on a contract with that person that the lender shall receive a rate of interest varying with the profits or shall receive a share of the profits arising from carrying on the business. Provided that the contract is in writing and signed by or on behalf of all the parties thereto.

But in case the buyer of the goodwill or the borrower of the money, in the cases above mentioned, becomes bankrupt, the claims of the seller of the goodwill and the lender of the loan are postponed to those of the other creditors. (See *Partnership Act*, 1890, s. 2.)

5. It will be observed that the only case above mentioned where a written contract is necessary in order to protect the person taking the profits of the business is that of the lender, a form for which is given (see form xvii).

No written contract is required in the case of the servant or agent, though it would be prudent to have one as evidence of the nature of the arrangement. A form (No. xiii) for this purpose is given in Class v.

The annuity to the widow or child and the annuity or other consideration for the sale of the goodwill will naturally be evidenced by some writing,\* though the

\* And, to be binding, all contracts for annuities must be in writing by the Statute of Frauds, because they are not to be performed within the year.

Partnership Act does not require it in order to protect the recipient.

6. Where no time is agreed on for the termination of a partnership, it may be dissolved at the will of either party. (See form ix and note.)

Subject to any agreement between the partners, a partnership, whether for a specified time or not, may be dissolved by mutual consent, and will be dissolved as regards *all* the partners by the death or bankruptcy of any of them.\* (See *Partnership Act*, ss. 32, 33.)

The executor, or the trustee in bankruptcy is not a partner but only an owner of the share of the partner whom he represents.

-Where a partner suffers his share of the partnership property to be charged under the Act for his separate debt, the other partners have the option of dissolving (sec. 33). The charging is under sec. 23, which enacts that, where judgment is obtained against a partner, the judgment creditor may obtain from a judge of the High Court, or from the Chancery Court of Lancaster, or from a County Court, an order charging the partner's interest in the partnership with the judgment debt and interest thereon, and also an order appointing a receiver and for accounts etc.

7. A partner who sues his co-partner for a dissolution or an account goes to the Chancery Division or, where the stock and credits of the partnership do not exceed £500, to the County Court. And in the latter court he may sue for "the unliquidated balance of a partnership account" to the extent of £50. But a partner can only bring an ordinary action at law against his co-partner to recover damages or a specific sum where no question of partnership account is involved and where the sum to be recovered does not come out of the partnership fund and will, when paid, be the property of the plaintiff and not of the partnership. For instance, where one partner assaults another the latter can sue for damages, and where one partner has settled a balance with another and given him a note or acknowledgment of it, or has bought a horse from the other, the latter may sue for the balance or the price. The same may be said of the balance due to or from an outgoing partner who has sold his share.

8. In consequence of the above rule, it is desirable that an incoming partner's premium, or share of capital,

\* But if the surviving partners continue the business without any fresh arrangement, they will be presumed to mean to carry on on the old terms.

should be either paid down or distinctly secured to the other partners individually before he joins the business or signs his articles.

If each partner is to furnish a share of capital and one lends the other the amount or part of it, the lender may sue his partner for the loan. So if partners agree to furnish capital from time to time to meet expenses as they occur, and one is compelled to pay the whole of the expenses, he may sue the others for what they ought to have contributed.

9. In my little book on Private Trading Partnership I have given some hints on the preparation of partnership agreements and it may be convenient here to repeat some of these hints. ●

If the partners are to share profits unequally, say so; for it will not be presumed from their contributing capital unequally.

If one partner brings in, as the whole or part of his capital, any property, real or personal, which is not money, state the whole contribution in money and then that the property is valued at so much and taken as being so much of that money.

If the land of one partner is to be partnership property, say so, and have it conveyed to a trustee for the partners.

Where the partnership owns land, declare that, as between the real and personal representatives of a partner who dies, his share shall be deemed personal estate.

If the articles are silent on the subject, interest at £5 per cent. on advances or payments by a partner will be payable before profits are divided; if you wish interest on capital to be in the same position, you must say so.

If any partner is to be allowed to give less attention to business than the others or is to be allowed to continue or enter upon any other business, say so.

If any partner is to be entitled to remuneration for something he may have to do in the business, or if any partner is not to enjoy an equal share in the management of the business, these things must be expressed.

If one partner is to be allowed to hold an office, say how much of his salary is to go to the account of the firm and, in case the partnership is dissolved while the office continues, how much he is to allow his co-partner in respect of the office, or that he is to pay nothing in respect of it.

If the firm name is to be used, provide that no partner shall contract on behalf of the partnership except in the firm name. The firm, it is true, will thus lose the bene-

fit of one partner being able to act as agent for the partnership as undisclosed principals; but it will avoid the risk of his making a bargain in his own name and then throwing it on the firm when it has turned out bad.

If any partner is to be allowed to retire, state the length of notice and the other terms on which he may do so and in what mode he is to offer his share to the other partners, and provide that the others are to continue.

Remember that, if an offer of a share is once made and accepted, or if a notice to dissolve is once given in accordance with the articles, neither the offer nor the notice can be withdrawn without the consent of all.

-If a surviving partner is to pay an annuity out of the business to the widow or child of one who dies, or a continuing partner is to pay such an annuity to an outgoing partner, provide that the one who has to pay shall continue the business or, if he sells it or takes a partner, shall secure the annuity or at least make the purchaser or the new partner enter into a corresponding covenant *with the annuitant*.

Partners during the partnership will be restrained by the law from competing with the firm, but if, on retirement, a partner is to be prevented from engaging in the same business within certain limits of time or space, define those limits and take care that they are reasonable.

Remember that partnership trade marks are an asset of the partnership and may have to be provided for in a dissolution.

#### I. AGREEMENT CONSTITUTING A PARTNERSHIP AT WILL.

We hereby agree to become partners as saddlers. Dated the day of [*month and year*].

A. B.

C. D.

#### II. A FULLER FORM WHERE ONE IS IN BUSINESS ALREADY.

Agreement made this      day of [*month and year*], between A. B. of      , and C. D. of      .

1. The said parties agree to become partners as saddlers from the date hereof.

2. The business is to be carried on free of rent at the house of the said A. B. where the books and other documents relating to the partnership shall be kept, but accessible at all times to the said C. D.

3. The partnership property shall consist of the stock in trade and implements of the said A. B. and of £      , lodged in

Messrs.       's bank by the said C. D. in the joint names of the partners.

4. Each partner may draw out weekly a sum not exceeding £       , on account of his share of the profits.

5. \*The profits of the business are to be divided on the 25th of March and the 29th of September in each year, between the partners in the following proportion, namely, three-fifths to the said A. B. and two-fifths to said C. D., and the payments and liabilities are to be borne by them in the like proportions.

A. B.

C. D.

### III. ARTICLES OF PARTNERSHIP FOR A TERM OF YEARS.

Agreement made this       day of [*month and year*], between A. B. of       , and C. D. of       .

1. The said parties agree to enter into partnership as druggists, under the firm of B. and D. for       years, from the date hereof, or †until the partnership is determined by either party giving to the other a three months' notice in writing, ending with a current year of the partnership. •

2. The partnership business is to be carried on in convenient premises to be taken for the purpose in the city of Manchester.

3. The partnership capital is to consist of the sum of £       , to be contributed equally by the partners, and lodged on or before the       day of       , to their joint account at the bank of Messrs. Coutts, and of the property, credits, and stock in trade of the firm for the time being.

4. Each partner may draw £       a week on account of his profits, but if, at the periodical taking of accounts hereinafter mentioned, either partner has drawn out during the past year a sum exceeding the profits to which he shall be entitled, he shall repay the surplus to the partnership.

5. Neither partner shall sign any promissory note or bill in the name of the ‡firm (other than a draft on a banker in the common course of business); nor shall give credit after warning from his co-partner; nor shall, without his written consent, borrow money, or compound debts, or become surety, or bail, or enter a contract for more than £       , or engage a servant to the firm, or take an apprentice, or engage in any other business.§

6. Any engagement or liability entered into or incurred by

\* If the profits are to be equally divided, Clause 5 should stop at the words "in each year."

† Or say for "the term of twenty-one years from the date hereof, subject to its being ended at the expiration of the first seven or fourteen years by six calendar months' previous written notice, given by either of the partners to the other, or sent by post to his usual or last known place of abode."

‡ Each, therefore, must sign separately, except in the case of a cheque.

§ Here you may add, if necessary, "or be more than       weeks absent from the place of business during any year."



either partner in contravention of the above clause, is to be at his exclusive risk, and the firm is to be indemnified out of his separate property.

7. Accounts shall be kept in books of all partnership transactions, and such books, together with all other documents connected with partnership business, shall be kept at and not be removed from the principal place of business, and be accessible to each partner.

8. On the first day of every year an account shall be taken of the partnership property, stock, credits and liabilities, and the sum found to be due to each partner shall be carried to his separate account.

9. On the taking of such accounts, they shall be entered, together with the valuation of the stock, in two books, each signed by both partners, and each partner shall have one of the books and shall be bound thereby, unless within a year some manifest error be found therein, in which case it shall be rectified.

10. On the expiration or other determination of the said partnership, a full written account shall be taken of all the partnership property, stock, credits and liabilities, and a written valuation shall be made of all that is capable of valuation, and such account and valuation shall be settled, and provision shall be made for the payment of the liabilities of the partnership, and the balance of such property, stock and credits shall be divided equally between the partners, and each shall execute to the other proper releases and proper instruments for vesting in the other, and enabling him to get in such property, stock and credits.

11. If either partner shall die before the first day of January next, his executors and administrators shall be entitled to the share of the capital brought in by him, together with £      per cent. interest in lieu of profits.

12. If either partner shall die after the said day, and during the continuance of the partnership, his executors and administrators shall be entitled to the value of the share of the partnership property, stock and credits, to which the deceased partner would have been entitled on the first day of January last preceding his death together with £      per cent. interest from that day in lieu of profits, and the surviving partner shall secure such sum by a bond in double the amount conditioned for the payment of such sum in twelve months by four quarterly instalments.

13. The surviving partner, \*his executors or administrators shall execute a proper instrument indemnifying the executors and administrators of the deceased partner and his estate from all the liabilities of the partnership; and the executors or administrators of the deceased partner shall release and assign to

\* The words "his executors, etc." are introduced in case the surviving partner dies before the settlement is made with the representatives of the deceased partner.

the surviving partner, his executors and administrators, all their interest in the property, stock and credits of the partnership, and shall empower him or them to get in and recover the same.

14. If either partner shall be guilty of a breach or non-observance of the fifth and seventh clauses above contained, the other, within three calendar months after such event shall have become known to him, may dissolve the partnership by notice in writing, declaring the same to be dissolved from the date of such notice, and the partnership shall thereupon cease and determine, and the partner to whom such notice shall be given shall be considered as quitting the business for the benefit of the partner giving such notice.

15. If, at any time during the subsistence of the partnership, or after its determination, any dispute shall arise between the partners, or between either of them and the executors or administrators of the other, or between their respective executors or administrators, concerning any matter relating to the partnership, the same shall be referred to the award of such person as shall be appointed for that purpose by the parties within thirty days after such dispute shall arise, and in the event of no such appointment being made, then to a barrister-at-law to be appointed by the \*town Clerk for the time being of the said city of Manchester, and such reference may be made a rule of Court. In Witness whereof the said parties have hereto set their hands and seals the day and year first above written.

A. B. [Seal.]

C. D. [Seal.]

Signed, sealed, etc. [*follow one of the other forms of attestation given in class xii*].

#### IV. ARTICLES OF PARTNERSHIP BETWEEN THREE, WITH UNEQUAL DIVISION OF PROFITS.

Agreement made this       day of [*month and year*], between A. B. of       , of the first part, C. D. of       , of the second part, and E. F. of       , of the third part.

[*The same Clause 1, in Form iii, and see note.*]

2. The partnership capital is to consist of the stock in trade [and business premises]† of the firm for the time being, and

\* Or mention some other respectable public office which is likely to be held by some person above suspicion of partiality. This person would hardly refuse to make the appointment, or before doing so, to listen to any objections which either party might entertain towards the appointment of any particular person. The fact of the reference being to a barrister goes far to insure an impartial arbitrator, competent to deal with legal questions. There are few matters which can safely be referred to any but a lawyer. (See Arbitration.)

† Omit the words in brackets if the premises are the separate property of one or more of the partners, whether or not they are to receive a rent for them from the firm.

of £      \* now standing to the credit of the firm at the bank of Messrs.

3. The said A. B. and C. D. are each entitled to two-fifths of capital and profits, and the said E. F. to the remaining one-fifth, and the payments and liabilities are to be borne by the said parties in the like proportions.

4. Each partner may draw monthly on account of his share of profits as follows:—The said A. B. and C. D. may each draw £      and the said E. F. £      , but so that, at the periodical taking of accounts hereinafter provided, each partner shall refund to the partnership any excess drawn by him above his share of profits for the past year.†

5. [*The same as Clause 5 in Form iii with the changes required for three partners.*]

6. [*The same as Clause 6 in Form iii with the changes required for three partners.*]

7. [*The same as Clause 7 in Form iii.*]

8. [*The same as Clause 8 in Form iii.*]

9. [*The same as Clause 9 in Form iii, except that there will be three books and “all the” must be substituted for “both.”*]

10. Copy Clause 10 in Form iii, down to “liabilities of the partnership,” and then continue *as follows*:]—and the balance of such property, stock and credits, shall be divided between the partners in the proportions aforesaid, and each shall execute to the others proper releases, and proper instruments for vesting in them, and enabling them to get in such property, stock and credits.

11. That if any of the partners shall die before the first day of January next, his executors and administrators shall be entitled to the share of the capital brought in by him (being in the case of the said A. B. £      , and in the case of the said C. D. £      , and in the case of the said E. F. £      ), together with £      per cent. in lieu of profits.

12. That if any of the partners [*follow Clause 12 or Form iii, but substitute “surviving partner or partners,” for “surviving partner”*].

13. The surviving partner or partners, his or their executors and administrators,‡ shall execute a proper instrument indemnifying the executors and administrators of any deceased partner and his estate from all the liabilities of the partnership; and the executors and administrators of the deceased partner or partners shall release and assign to the surviving partner or partners his or their executors and administrators, all the interest of the deceased partner or partners in the property, stock

\* This is supposing that each partner has paid in his share. If one has not, and if no partner will advance it to him on the security of his share of the profits, say “and of £      to be paid into the account of the firm at their bankers by the said E. F. on or before the      day of [*month*] next.”

† Or “Half-year” if the profits are divided half-yearly.

‡ See note to Clause 13 of Form iii.

and credits of the partnership, and shall empower him or them to get in and recover the same.

14. If any partner shall be guilty of a breach or non-observance of the fifth and seventh clauses above contained, any other or the others, within three calendar months after such event shall have become known to him or them, may dissolve the partnership by notice in writing, declaring the same to be dissolved from the date of such notice, and the partnership shall thereupon cease and determine, and the partner to whom such notice shall be given shall be considered as quitting the business for the benefit of the other partner or partners.

15. If at any time during the subsistence of the partnership, or after its determination, any dispute shall arise between the partners or between any of them and the executors or administrators of any other or others of them or between the respective executors or administrators of any of them [*follow Clause 15 in Form iii*]. In Witness whereof the said parties have hereto set their hands and seals, the day and year first above written.

Signed, sealed, etc. [*follow one of the forms of attestation given in Class xii*].

• A. B. [*Seal.*]  
• C. D. [*Seal.*]

#### V. ARTICLES TAKING A SECOND PARTNER AS A DORMANT PARTNER.

Agreement made this       day of [*month and year*], between A. B. of [*tanner*] and C. D. of       .

1. The said A. B., in consideration of £       and a \* promissory note for £       , at       months, paid and given to him by the said C. D. as his share of the partnership capital admits the said C. D. to one-half of the said A. B.'s business of a tanner, and of the lease under which the premises on which the same is carried on are held by the said A. B. and the said C. D. enters into partnership accordingly on the following terms:—

2. The partnership capital shall consist of the business premises, and the stock, implements, office furniture and credits of the said A. B. and of the property, stocks and credits of the firm for the time being, and of the sum of † £       now standing to the credit of the firm in the bank of Messrs.       , and of the said sum of £       secured to the said A. B. by promissory note, as aforesaid.

3. The said parties shall constitute a partnership under the

\* If the sum secured by the note is meant to go into the business the note should be payable to "A. B. only" and not to order or bearer. (See note to next clause.)

† A. B.'s balance should be previously transferred to the credit of the firm, and the sum paid by C. D. should be paid to the same account if such is the intention. As regards the note, A. B. will be able to sue C. D. upon it, and C. D. may discharge it by paying the money into the partnership account.

firm of B. and Co., in the said business, for a term of twenty-one years from the date hereof, subject to its being ended at the expiration of the first seven and the first fourteen years by six calendar months' previous written notice given by either of the partners to the other, or sent by post to his usual or last known place of abode.

4. It shall not be necessary for the said C. D. to take any part in the said business. But the said A. B. is to devote the whole of his time, skill and energies, to the conduct of the said business, for the mutual advantage of the partners, and will not, without the written consent of the said C. D. engage directly or indirectly in any other business or speculation, or become bail or surety for another, or do any act whereby the partnership property, stock and credits, may be seized or taken in execution.

5. In the event of any breach or non-observance of the last preceding clause by the said A. B., it shall be lawful for the said C. D., at any time within three months after such event comes to his knowledge, by notice in writing to the said A. B., delivered at the principal place of business of the partnership, to put an end to the partnership from the day of the date of such notice.

6. Upon the determination of the partnership for the cause, and in the manner aforesaid, before the first day of January next, the sum of £ \* shall become a debt from the said A. B. to the said C. D.; and upon the determination of the partnership for the cause, and in the manner aforesaid, after the said first day of January the value of the property, stock and credits, to which the said C. D. was entitled at the last yearly taking of stock and account, shall become a debt from the said A. B. to the said C. D., and the said C. D., in either of such events, may immediately proceed to wind up the business.

7. Each partner may draw monthly on account of his share of profits as follows: the said A. B. may draw £ , and the said C. D. £ , but so that at the periodical taking of accounts hereinafter provided, each partner shall refund to the partnership any excess drawn by him above his share of profits for the past year.†

*[Here follow Form iii, from Clause 7 to the end, inclusive; but omit Clause 14, for which Clause 5 in this Form is substituted.]*

In Witness whereof the said parties have hereto set their hands and seals the day and year first above written.

Signed, sealed, &c. *[follow one of the forms of attestation given in Class xii]*.

A. B. *[Seal.]*  
C. D. *[Seal.]*

\* The amount brought in by C. D.

† Or "half-year," if the profits are divided half-yearly.

# VI. DISSOLUTION OF PARTNERSHIP BETWEEN TWO PARTNERS, ONE CONTINUING IN THE BUSINESS.

This Indenture made the                      day of [*month and year*], between A. B.\* of                      , of the one part, and C. D. of                      , of the other part, Whereas, it has been agreed to dissolve the partnership heretofore carried on by the said parties hereto, under articles dated the                      day of [*month and year*]. Now this Indenture Witnesseth as follows,—

1. In consideration of one moiety of the profits of such business up to the                      day of [*month*] last, having been received by the said A. B. and of £                      secured to him by a bond bearing even date herewith of the said C. D., being the value of the share of the said A. B. in the property, stock and credits of the partnership, and also in consideration of an indemnity against the partnership liabilities, by a bond bearing even date herewith of the said C. D. indemnifying the said A. B. against the partnership liabilities, the said A. B. releases all his interest in the property, †stock, credits and business of the partnership to the said C. D. his executors, administrators and assigns, with power in the name of the said A. B. his executors and administrators, to recover and give receipts for the same premises.

2. The said C. D. covenants with the said A. B. that the said C. D., his executors or administrators, will discharge and keep indemnified the said A. B., his heirs, executors, and administrators, against all the liabilities specified in the schedule hereto, but so that this covenant shall not be enforced so long as the said A. B., his heirs, executors and administrators are kept so indemnified as aforesaid.

3. Each of the parties hereto releases the other of them, his heirs, executors, and administrators, from all claims in respect of the said partnership, and the articles constituting the same, preserving, nevertheless, in full force and effect the said bonds of the said C. D. In Witness whereof the said parties have hereto set their hands and seals the day and year above written.

A. B. [*Seal.*]

C. D. [*Seal.*]

Signed, sealed, etc., [*follow one of the forms of attestation in Class xii.*]

# VII. ‡BOND BY CONTINUING PARTNER SECURING TO OUT- GOING PARTNER THE PAYMENT FOR HIS SHARE.

Know all men by these presents that I, C. D. of                      , am firmly bound to A. B. of                      his executors, administrators and assigns, for the payment to him or them of the

\* A. B. is the outgoing, and C. D. the continuing partner.

† The business premises, whether freehold or leasehold, will be best assigned by a separate instrument.

‡ This is the first bond mentioned in Clause 1 of Form VI.

penal sum of \*£            sterling. Dated this            day of [month and year].

C. D. [Seal.]

The above-written obligation is conditioned to be void if the above-bounden C. D., his heirs, executors or administrators, shall pay to the said A. B., his executors, administrators or assigns, the sum of £            on the            day of [month] next, the sum of £            on the            day of [month and year], and the sum of £            on the            day of [month and year].

B.

VIII. ‡BOND BY CONTINUING PARTNER, INDEMNIFYING OUTGOING PARTNER AGAINST PARTNERSHIP LIABILITIES.

Know all men by these presents that I, C. D. of            , am firmly bound unto A. B. of            , his executors, administrators and assigns, for the payment to him or them of the penal sum of £            sterling. Dated the            day of [month and year].

C. D. [Seal.]

The above-written obligation is conditioned to be void if the said C. D., his heirs, executors, or administrators, shall keep the said A. B., his executors and administrators, indemnified from all debts and liabilities of the said A. B. and C. D., which, up to the date of the said obligation, shall have arisen out of the partnership between the said A. B. and C. D. in the business of [business].

A. B.

IX. §NOTICE DISSOLVING A PARTNERSHIP IMMEDIATELY.

[Date.]

Sir,—

I hereby dissolve the partnership between us from this day.

A. B.

To C. D.

X. NOTICE OF DISSOLUTION OR RETIREMENT UNDER A POWER GIVEN BY THE ARTICLES.||

[Date.]

Sir,—

I give you notice that I shall put an end to the partnership

\* Usually double the value of the share.

† Observe that the defeazance which points out in what events C. D. is not to be liable on the bond, must be signed by A. B., to whom the bond is given.

‡ This is the second bond mentioned in Clause 1 of Form VI.

§ When these, or any other kind of written notices have to be given, the person giving the notice should write it in duplicate, and keep one part himself indorsed with a memorandum of the date of delivery or posting. This memorandum should be made by the person who delivers or posts, and this had better be the person from whom the notice proceeds.

|| On the dissolution of a partnership or retirement of a partner,

between us on the            day of [*month*] next, at which time I shall be ready to indemnify you, and shall expect you to indemnify me according to the articles.

A. B.

To C. D.

# XI. \*NOTICE OF DISSOLUTION FOR BREACH OF ARTICLES.

Sir,—

Whereas, in breach of the fifth clause of our articles of partnership, on or about the            day of [*month and year*] you signed a promissory note, or bill (not being a draft on a banker), for £           , or thereabouts, in favour of one S. T. or to which he was a party, in the name of the firm, without being unavoidably compelled to do so in the common course of business, And on or about the            day of [*month and year*], you gave credit to one U. V., after warning from me not to trust him; And in or about the month of           , in the year           , without my written consent, or other sanction, you borrowed money from one W. X., And in or about the month of           , in the year           , without my written consent, or other sanction, you compounded a debt due from one Y. Z., amounting to £           , or thereabouts, by accepting instead thereof £           , or thereabouts; And on or about the last-mentioned month, without my written consent, or other sanction, you became surety to one A. Z. for the debt of one B. Z.; Now, therefore, I give you notice that I dissolve our partnership from the date hereof, and require you to come to a full account and indemnify me according to the articles.

A. B.

To C. D.

# XII. NOTICE OF DISSOLUTION WHERE IT IS DOUBTFUL WHETHER THERE HAS BEEN A PARTNERSHIP.†

Sir,—

If a partnership has ever existed between us,‡ consider it as now dissolved.

A. B.

To C. D.

any partner may publicly notify the same. (*Partnership Act*, 1890, s. 37.)

\* See note ‡ on previous page.

† As where the other person claims to be your partner, but you deny it, and wish to get rid of further responsibility without admitting that any has existed.

‡ Insert, if desirable, "which I do not admit."



#### CLASS IV.

### XIII. \*NOTICE REQUIRING INTEREST TO BE PAID IN LIEU OF A SHARE OF PROFITS ON CAPITAL LENT TO THE FIRM.

Gentlemen,

Henceforth I shall decline to accept any profits, either for time now past or for future time, in respect of the sum of £           , lent by me to your firm, but shall only take interest at the rate of £            per cent., being the minimum rate agreed on.†

A. B.

To Messrs. C. and D.

### †XIV. NOTICE TO THE PUBLIC OF DISSOLUTION OF PARTNERSHIP.

Partnership dissolved. The partnership between A. B. and C. of Gutter Lane, London, § was dissolved on the            day of [month and year], and the business will be carried on by C.||

Although by the articles, or other agreement between the partners, one partner or each partner may be forbidden to enter into contracts of a particular kind, as, for instance, bills and notes, in the name of the firm, yet if such contract is usual in the kind of business in which the firm is engaged, and is made with a person

\* An outgoing partner often leaves a portion of his share, with an option either to take a fixed interest, or a share of profits, with power to call in his money on notice. A person does not incur liability as a partner by lending money to another, engaged in business at fixed interest, however high, and whether there be a contract in writing or not. The liability to the world is incurred by taking profits, or interest varying with profits, *without* a contract in writing signed by or on behalf of both parties. (See form xvii and note.) In the latter case, the above notice, if acted on, will save the person giving it from the danger arising from that source after his last receipt of profits. Apart from these considerations, he may prefer the fixed interest as being likely to exceed the profits.

† Here may be added, "and I require you to return me the said principal sum on or before the            day of [month and year]."

‡ On the dissolution of a partnership, *any* partner may publicly notify the same (*Partnership Act*, 1890, s. 37), but the mere publication of this notice will not exempt the outgoing partners from liability, on any contracts which the continuing partner may make, in the name of the firm, with persons who have dealt with the firm and have known the outgoing partners as members of the firm, and are not aware of the dissolution. All such persons, therefore, should have a notice sent to them individually.

§ Or "will expire."

|| Here you may add, if such is the case, "who is authorised to settle all debts of the firm."

ignorant of the restriction, the firm will be bound, and the other members will be left to their remedy against the partner who has committed the breach of faith. It is, therefore, desirable that all persons with whom such contracts are likely to be made should be informed—writing, though preferable, is not necessary—of the restriction in question. The following are forms of written notices to individuals:

XV. NOTICE TO A THIRD PERSON NOT TO TAKE BILLS OF A PARTNER.

To Mr. E. F.

Take notice that according to the partnership articles of firm of A. B. and Co. no partner is entitled to put the name of the firm to bills or notes.

A. B.

XVI. ANOTHER FORM RELATING TO A SPECIFIC TRANSACTION.

[Date.]

To Mr. E. F.

Take notice that the contract for supply of hay which I am informed our Mr. C. D. contemplates entering into with you is not one by which he is entitled to bind the firm of A. B. and Co.

A. B.

THREE SUBSTITUTES FOR A PARTNERSHIP.

11. One is by a form of contract engaging a person to sell on commission, or to work on a share of profits (see Class v, master and servant); another is to make a person a consignee to account at a fixed rate (see Class xii), and the third is by a loan at a share of profits. By sec. 2 of the Partnership Act, 1890, a man does not incur the liabilities of a partner merely by

“The advance of money by way of loan to a person engaged, or about to engage, in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business; provided that the contract is in writing and signed by or on behalf of all the parties thereto.”

Though these contracts do not create a partnership, and are expressly intended to avoid doing so, there is no place where I can more conveniently introduce an

**XVII. AGREEMENT FOR A LOAN ON A SHARE OF PROFITS  
BY WAY OF INTEREST.**

Agreement made this       day of [*month and year*] between A. B. of       , esquire and C. D. of       , brass-founder.

1. A. B. lends the sum of £1000 to C. D. to be employed in his business of a brass-founder.

2. This loan is not to be discharged by C. D. until five years from the date hereof without the consent in writing of A. B. his executors or administrators.

3. This loan shall not be recalled by A. B. his executors or administrators until five years from the date hereof, unless at any of the times hereinafter provided for the payment by the said C. D. of one-third of the profits of his said business such share of the profits shall amount to no more than interest at the rate of 5 per cent. per annum in the principal money, in which event the said A. B. his executors or administrators may within a week after the payment recall this loan by weeks' notice in writing.

4.\* In the event of

(a) the death of C. D.;       .

(b) the profits or interest hereinafter provided for being days in arrear; or

(c) the acquiring by another person without the written consent of A. B., his executors or administrators, of a right to any share in the profit of the said business.

The said principal moneys shall *ipso facto* become due to A. B., his executors or administrators together with profits or interest as hereinafter provided proportioned to the time which shall have elapsed since the last preceding day on which profits or interest were due.

5. C. D. agrees with A. B. that C. D., his executors or administrators, will do as follows:

Will pay to A. B. his executors or administrators on or before every Lady Day and Michaelmas Day until this loan is discharged in accordance with this agreement and at the termination of this loan one-third part of the profits of the said business accruing during the period which shall have elapsed since the last preceding day on which profits or interest were due, and, in case such one-third part shall be less than at the rate of 5 per cent. per

\* In preparing these agreements it must be remembered that If the lender is allowed to withdraw the loan without adequate reason, it will put the borrower to needless inconvenience; while, if the borrower can pay off the loan the moment his business prospers and he can command capital, the lender is deprived of a proper reward for a loan granted without security. Therefore, provided C. D. lives and prospers and keeps faith, the loan is to continue for five years, but A. B. can recall it if the business falls below a certain level and, on the borrower dying or breaking faith, the money becomes at once due.

annum on the principal sum, will at the times aforesaid pay interest at the rate of 5 per cent. per annum.

And during the continuance of this loan and until the discharge thereof in accordance with this agreement, will not without the consent in writing of A. B., his executors or administrators, suffer any other person to acquire a right to any share in the profits of the said business;

And will during the continuance and at the termination of this loan at each time appointed for payment of profits or interest as aforesaid, render to A. B. his executors or administrators a full and true account in writing of the outgoings, incomings, stock in trade property, credits and liabilities of the said business for the period during which such payment is due;

And will at all times, during the continuance of this loan and until the discharge thereof in accordance with this agreement, keep proper books of account of the said business and the same (together with all vouchers, order-books, invoices, banker's pass-books, cheque-books, books, letters, writings and evidences whatsoever connected with the said business) will keep and not remove or suffer;

And will at all times, during the continuance and until the discharge as aforesaid of this loan, permit A. B. his executors or administrators and any accountant on his or their behalf to inspect and take copies of all or any of the books and other documents and things aforesaid;

And will at the expiration of the said term or other termination of this loan repay to A. B. his executors or administrators the said principal sum of £1000 with profits or interest as hereinbefore provided. In witness whereof we have hereto set our hands the day and year first above written.

•           A. B.                           C. D.

Signed by the parties hereto in the presence of me  
E. F.

[*Residence and occupation.*]

## CLASS V.—MASTER AND SERVANT.

### TUTORS, GOVERNESSES AND TEACHERS IN SCHOOLS.

1. On the hiring of domestic servants there is, in most parts of the country, a term implied by custom in the contract, by which the service, which is a yearly one, may be ended by one month's notice on either side, or by the master paying a month's wages to the servant. With domestic servants, therefore, no bargain need be made about notice where the custom prevails.

But tutors, governesses and teachers are not domestic servants. If, therefore, they are engaged without mention of time, the engagement will be for a year, and will only end with the year, unless broken by misconduct on one side or the other. It is, therefore, important for both parties to stipulate that the engagement may be terminated at any time by (say) three months' previous notice given by either party to the other.

The engagement then will end, if allowed to run its natural course, in a year from the day when it began; but if the employment continues for a day beyond that time it lasts for another year, subject, of course, to the same terms as to notice, &c., unless others are arranged.

The Forms for engaging tutors can easily be framed from those intended for governesses.

It is desirable to stipulate specifically for the branches of knowledge in which instruction is to be given, because, in case the teacher shews ignorance of any of these, there will be less risk in discharging him or her.

#### I. ENGAGEMENT OF GOVERNESS—SHORTEST FORM.

A. B. engages C. D. as a resident governess, at £60 a year, payable quarterly, but the engagement may be ended at any time by three months' notice on either side. Dated the day of [month and year].

A. B.  
C. D.

## II. THE LIKE—FULLER FORM.

**Agreement made this                  day of                  , between A. B. of**  
**, and C. D. of                  .**

A. B. engages C. D. as a governess, to reside as a member in his\* family for twelve months from the            day of            ,† at a salary of £80 a year, payable quarterly: but the engagement may be ended at any time by            months' notice on either side.

C. D. is to have her washing done at the expense of A. B.

C. D. undertakes to give instruction [to the girls of the family, and to the boys under 10], in the following branches of knowledge, namely—English, and the elementary articles of knowledge usually taught in that language, French, Latin, Music and Drawing.

A. B.   
C. D.

### III. THE LIKE WHERE THE ENGAGEMENT IS MADE THROUGH AN AGENT.

Agreement made this      day of      , between A. B. (as  
agent for E. F.) and C. D.

A. B.,† on behalf of E. F., engages C. D. as governess, and to reside in his family as a member thereof for twelve months from the            day of            , at a salary of £80 a year, payable quarterly; but the engagement may be ended at any time by            months' notice on either side.

C. D. is to have her washing done at the expense of E. F.

C. D. undertakes to teach the girls of the family, and the boys under 10, the following branches of learning, namely:—

#### IV. || ENGAGEMENT OF UNDER-MASTER.

**Agreement made this                day of                , between A. B. of**

**, and C. D. of .**

A. B. engages C. D. as under-master in the school kept by A. B., from the            day of            , at a salary of £60, payable quarterly, but the engagement may be ended at any time by months' notice on either side.

C. D. is to have a bedroom to himself and a fire in winter, and board, lodging, and washing, except during the vacations, and is to observe the rules of the house. It is especially understood that the said C. D. is not to be out after the house is

\* Or "her."

† Or "from the date hereof."

† This does not make the agent liable, unless the contract is made without the authority of the principal; and not even then, if the latter subsequently adopts it.

§ Insert these in like manner, as in the preceding form.

¶ If this is made through an agent the form may be assimilated to the last preceding.

closed at half-past ten in the evening, and is not to smoke in the house, or when in charge of pupils elsewhere.\*

### DOMESTIC SERVANTS.

2. No form is necessary or usual in hiring this kind of servants by word of mouth. The terms of hiring, unless specially varied, are those settled by custom, and which are stated at the beginning of this chapter. But there is one purpose for which writing is desirable. The contract of hiring, though determinable by a month's notice, is, as I have before said, *a contract for a year*. Now, by the Statute of Frauds, a contract not to be fulfilled within a year cannot be enforced unless a writing is signed or an earnest paid. Therefore, where there is no writing and no earnest and the service is to begin at a *future* day, the servant is not bound to enter into the service nor the master to receive him. In short the contract is not binding at all, and disappointment often results to one party or the other. In order to avoid this I would suggest the employment of writing, and it will be very easy to pay an earnest as well. The following form is framed for this purpose. Each party may have a duplicate.

#### V. HIRING OF DOMESTIC SERVANT FROM A FUTURE DAY.

The 1st day of September, 18 , A. B. engages C. D. as butler from the 15th instant at £50 a year, and C. D. accepts such service and receives one shilling by way of earnest.

A. B.

C. D.

3. Where the wages of a servant or any part of them are to be paid to anyone other than the servant who earns them, it is desirable to have a memorandum signed, or at least read over, to that effect. Sometimes a mother wishes to put her daughter, a minor, out to service, but has to engage a neighbour to do some of the work which the daughter has been used to do, and so requires to receive a part of the girl's wages. In such cases it will be prudent to take a memorandum to the following effect:—

\* A wilful breach of these rules will be ground for dismissal without notice.

# VI. AGREEMENT ON HIRING AN INFANT WHOSE WAGES ARE TO BE PAID TO THE PARENT.

The            day of [*month and year*] Mary P. enters the service of Mrs. Jackson at £9 a year, payable monthly, of which 10s. a month is to be paid to her mother, Jane P.

Mary P.

Jane P.

Ellen Jackson.

But it must be remembered that the servant who earns these wages may at any time revoke this order to pay a part of them to her mother and, if the servant sues for her wages, as she may do in the County Court,\* payment to the mother, after the girl has revoked the authority so to pay, will be no answer to the claim.

If the child revokes the authority, notice that she has done so should be given to the parent.

## APPRENTICES.

4. The contract of apprenticeship is one by which the apprentice agrees to serve a master for a stated time in consideration of being instructed in the master's business. The contract is usually in the form of a deed, or *indenture*, a name given to every kind of deed to which there are more parties than one. To the indenture of apprenticeship there need be only two parties, the master and the apprentice, whether the latter is of age or not. The rule is that an infant cannot bind himself by his deed, *i. e.* he may repudiate it directly after he has come of age or at any time previously, but, if the contract is fair, and necessary for his welfare, he cannot recover money paid under it. He has, therefore, no motive for repudiating his indenture, and if he does so, no harm can result to the master if the apprentice has been fairly treated and taught. The reasons for making the father, widowed mother, or some adult friend of the apprentice a party to the deed, and the liabilities imposed on such a person by becoming a party, will be explained below where a form with three parties is given.

5. One caution must here be given to the master, namely, that he should not covenant to teach any business or branch of business which he may discontinue,

\* By s. 96 of the County Court Act, 1888, any person under 21 may sue for any sum, not exceeding £50, due for wages, or piece-work or work as a servant, in the same manner as if he [or she] were of full age.



as that would excuse the apprentice in absence and disobedience and would even entitle him to a return of the premium or a part thereof. And, inasmuch as the covenant to teach is usually made by reference to the description of the master at the beginning of the instrument, it would be better that he should not even describe himself as occupied in a business any part of which he is likely to give up, but only as occupied in the part which he is likely to retain.

#### VII. INDENTURE OF APPRENTICESHIP.

This Indenture, made this       day of [*month and year*] between A. B. of       , aged 16 years, and C. D. of       , stereotyper, Witnesseth as follows:

1. The said A. B. puts himself apprentice to the said C. D. to learn his said trade and business, and with him, after the manner of an apprentice, to serve from the       day of [*month and year*] for the term of       years thence next ensuing.

2. The said A. B. covenants with the said C. D. that he, the said A. B., will faithfully serve and obey the said C. D., and will not absent himself from such service day or night\* unlawfully, but in all things as a faithful apprentice behave himself toward him and all his, during the said term.

3. The said C. D., in consideration of a premium of £ (the receipt whereof he acknowledges), covenants with the said A. B. that he, the said C. D., in his said business of a stereotyper by the best means in his power will instruct the said A. B., and will provide for him sufficient meat, drink, lodging and other necessaries during the said term, and will pay him [*here insert what he is to be paid per week in each year*].

4. These presents shall be handed over to the said A. B., having served his term, with a certificate of such service indorsed thereon.

In Witness whereof the said parties have hereto set their hands and seals the day and year first above written.

A. B. [*Seal.*]

C. D. [*Seal.*]

Signed, sealed, and delivered by the said parties in the presence of

X. Y.

[*Residence and occupation.*]

Received       pounds, the premium for taking the said A. B. apprentice.

“

C. D.

6. The objects with which the father or some adult

\* If he is to live out of the house and to do no night-work the words “or night” may be omitted. The word “unlawfully” sufficiently provides for illness, over-fatigue or the master not finding the lodging, food or money bargained for.

friend of an apprentice under age is made a party to the deed are as follows: (1) to indicate the fairness of the arrangement by shewing that it had the approval of a parent or friend; (2) to bind such parent or friend to pay the premium or such part thereof as remains unpaid; and (3) to bind such parent or friend for the proper conduct and service of the infant apprentice.\*

The first two objects are very desirable. One way of securing them is the joining of the parent, or other adult friend, as in the form given below. The proper way of binding him for the good conduct of the apprentice is given afterwards.

#### VIII. INDENTURE OF APPRENTICESHIP WITH THREE PARTIES. •

This Indenture, made the            day of [*month and year*] between A. B. of the first part, the said C. D. of the second part, and E. F. of           , book-binder, of the third part, Witnesseth as follows:

1. The said A. B., with the consent of the said C. D., puts himself apprentice to the said E. F. to learn his said trade and business, and with him, after the manner of an apprentice, to serve from the            day of [*month and year*] for the term of            years thence next ensuing.

2. The said A. B. covenants with the said E. F. that he, the said A. B., will faithfully serve and obey the said E. F., and will not absent himself from such service day or night unlawfully, but in all things as a faithful apprentice behave himself towards him and all his during the said term.

3. In consideration of a premium of £20, whereof ten pounds is paid at the execution hereof and the remainder secured by the covenant of the said C. D. hereinafter contained, the said E. F. covenants with the said C. D., that he, the said E. F., in his business of a bookbinder by the best means in his power will instruct the said A. B., and will provide for him [*here state what, if anything, is to be provided*],\* and will pay him [*here state progressive wages*].

4. The said C. D. covenants with the said E. F. that he the said C. D., his executors or administrators, within a year from the date hereof will pay to the said E. F., his executors or administrators, the sum of £10, the remainder of the premium aforesaid.

5. These presents shall be handed over to the said A. B., he having served his term, with a certificate of such service indorsed thereon.

\* Of course the repudiation of the deed by the infant will not get rid of the parent's liability. Otherwise this covenant would be no security. (See Form X.)

† See note to the like part of the last preceding form.

## CLASS V.

In Witness whereof the said parties have hereto set their hands and seals the day and year first above written.

A. B. [*Seal.*]

C. D. [*Seal.*]

E. F. [*Seal.*]

Signed, sealed, etc. [*as in the last preceding form or one of the other forms of attestation in Class XII*].

7. The parent is usually made to bind himself for the conduct of the apprentice by a tricky way which should be avoided. Each party is made to covenant "for the true performance of all and every the said covenants and agreements, each of the said parties binding himself unto the others by these presents." This has been held to bind the father for the son. Now, if this is intended, it should be done plainly as follows.

### IX. COVENANT BY THE FATHER FOR THE GOOD CONDUCT OF THE APPRENTICE.

[*Follow clause 4 of the last preceding form and then go on as follows :*]

and that the said A. B. will duly observe and perform the covenants on his part herein contained.

8. There is nothing to prevent an indenture of apprenticeship being put an end to by notice, a provision for which may often be desirable to enable the parent to put an end to his liability. It may be in the following form.

### X. PROVISIO FOR ENDING APPRENTICESHIP ON NOTICE.

During the minority of the said A. B. it shall be lawful for the said C. D. or E. F.,\* at any time, by three months' notice in writing to the other of them, or by the said A. B. to the executors or administrators of the said C. D., to revoke these presents from the expiration of such notice, and if such notice is given by E. F., he shall return a part of the premium proportioned to the unexpired portion of the term.

9. Perhaps the apprentice has behaved badly and the master has lost by him and has a right to sue the father on his covenant and to go before the justices and have the indentures cancelled and perhaps get the apprentice punished. Under such circumstances it may suit the father, in order to save his own purse and his son's character and to avoid trouble with a fellow-townsmen, to enter into an agreement, which should be under seal, as follows:

\* The master.

# XI. AGREEMENT FOR CANCELLING INDENTURE OF APPRENTICESHIP.

This Agreement, made the            day of [*month and year*] between C. D.,\* of           , of the first part, A. B., of           , his son, of the second part, and E. F., of No. 1, Cathedral Close, in the City of C., bookbinder, of the third part, For the purpose of ending differences which have arisen between the parties hereto in respect of the apprenticeship of the said A. B. to the said E. F. under an indenture bearing date the            day of [*month and year*], Witnesseth as follows:—

1. The said E. F. accepts £25 paid to him on the execution hereof (the receipt whereof he acknowledges) by the said C. D. for the cancellation of the said indenture and in satisfaction of all claims against the said A. B. or C. D. thereunder, and said indenture is hereby declared to be cancelled.

2. No legal proceedings are to be taken at the suit or instance of any of the parties hereto against any other of them under the said indenture or in respect of anything done or suffered during the said apprenticeship.

†3. In consideration of the said cancellation the said C. D. covenants with the said E. F. that the said A. B. shall not during the space of three years from the date hereof become apprentice to or enter into the service or employ of any bookbinder in the said City of C., and that, in case of breach of this covenant, the said C. D. will pay to the said E. F. £20 by way of liquidated damages.

In Witness whereof the parties hereto have hereto set their hands and seals the day and year first above written.

A. B. [*Seal.*]

C. D. [*Seal.*]

E. F. [*Seal.*]

Signed, sealed, etc. [*follow a form of attestation given in Class XII*].

## EMPLOYMENT ON COMMISSION.

10. “Commission” is a word which properly means the employment of an agent or servant, but has come to be used to signify the remuneration which he earns, because that is what he thinks about more. Employment on commission, so understood, is where the person employed is to be paid, not in proportion to his pains, but to the benefit which his employer derives from them. A wage or salary is sometimes given in addition to commission, as is often the case with commercial travellers when the relation is that of master and servant. When

\* The father.

† If A. B. is of age, let him make this covenant for himself if E. F. will accept it.

commission is the only reward, the relation may be that of master and servant or of principal and agent only. The test is whether the person employed is under the orders of his employers.

Servants being often paid wholly or in part by commission, I here give a form of agreement to employ on commission, leaving the reader to add an agreement for wages where such terms are desirable.

## XII. AGREEMENT EMPLOYING A TRAVELLER TO SELL ON COMMISSION.

This Agreement, made the            day of [*month and year*], between A. B., of           , manufacturer of [*state sort of goods*], and C. D., of           , commercial traveller, Witnesseth :

1. The said A. B. employs the said C. D. to sell on commission the articles manufactured by the said A. B.

2. The said A. B. shall supply the said C. D. with samples of the said articles, and shall within the first four days of every calendar month post to the said C. D., to his above address or, at his request, elsewhere, a price list to be in force for the remainder of that month, and until the succeeding price list is so furnished.

3. The said C. D. shall obtain written orders for the said articles at prices not less than those shewn in the price list for the time being in force (bills at three months or less being treated as cash) and shall immediately post or deliver such orders to the said A. B. at his warehouse at the address above written.

4. An order shall be deemed to be accepted by the said A. B. unless within four days after its receipt he shall post to the said C. D., at his address above written, a notice that such order is not accepted.

5. The remuneration of the said C. D. shall be a commission at the rate of            per cent. on the classes of goods contained in the Schedule hereto, and            per cent. on all other goods.

6. The said A. B. shall cause written accounts of all orders received through the said C. D. to be made up at the end of each calendar month, beginning from the date hereof, and posted as aforesaid or delivered to the said C. D., and the commission in respect of such of the said orders as shall have been accepted shall then be due to the said C. D.

7. The said C. D. shall not travel or obtain orders anywhere for any other house in the same line of business as A. B.

8. The said A. B. shall not employ any other traveller to obtain any orders in Lancashire or Yorkshire, or receive orders from those counties through any other traveller.

9. The said A. B. shall not sell any articles at prices below those stated in the list for the time being current.

10. If C. D. shall commit a breach of clause 7 he shall pay £            to the said A. B. by way of liquidated damages, and if

A. B. shall commit a breach of clause 8 or 9 he shall pay to C. D. £            by way of liquidated damages.

11. This agreement may be ended by three calendar months' written notice by either party to the other.

#### THE SCHEDULE.

[*List of articles on which the higher commission is allowed.*]

In Witness whereof the parties hereto have hereto set their hands the day and year first above written.

A. B.  
C. D.

Witness E. F.

[*Residence and occupation.*]

11. In many businesses it is possible to employ servants or agents on terms of payment by a share of profits (which resembles commission though it does not bear the name) so as to excite the same zeal and activity as would result from a partnership without any of the special liabilities arising therefrom. The rule laid down by decisions before 1865, afterwards embodied in a statute of that year\* and again repeated in the Partnership Act, 1890, is that "a contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not *of itself* make the servant or agent a partner in the business or liable as such" (sec. 2, 3).

The following form is for the engagement of a person to manage a branch business on terms of sharing profits without salary; but with the right to retain a small portion of his share of profits free from liability to subsequent unexpected losses. It would be easy to substitute for this a small fixed salary; but there is little advantage in this, for salary is consistent with partnership. Except as to salary, the terms of the following form resemble some which, though made before 1865, were held to constitute a contract of hiring and service and not of partnership.†

#### XIII. AGREEMENT ENGAGING A SERVANT TO BE PAID BY SHARE OF PROFITS.

This Agreement, made the            day of [*month and year*] between A. B., of           , manufacturer,\* of the one part, and C. D., of           , in the City of N.           , of the other part, For engaging the said C. D. to carry on for the said A. B. a

\* 28 and 29 Vict., c. 86, repeated by the Partnership Act.

† *Ross v. Parkyns*, L. R. 20, Eq. 331.

branch of his business in the said city of N., receiving by way of remuneration a share of the profits earned by such branch, Witnesseth as follows:

1. The said A. B. shall hire suitable business premises in the said city and stock the same with stock-in-trade to the value of £ , to be approved by the said C. D., and shall send thither a suitable supply of samples to be approved as aforesaid, and shall keep the same premises so stocked and supplied.

2. The said C. D. is to superintend the delivery of the said stock and samples and their arrangement there, and is to open and conduct for the said A. B. a branch of his business there, and shall transmit to the said A. B. all orders which cannot conveniently be executed from the branch, and such orders shall be executed as far as possible through the agency of the said C. D., and, however executed, shall be carried to the account of the branch at N.

3. The said C. D. shall devote himself solely to the business of the said branch, and shall not directly or indirectly engage in any other business, and shall conduct the said business in the manner usual in businesses of the like kind.

4. Books of account of the business of the said branch shall be kept at the said premises by the said C. D., with such assistance as he may find necessary, subject to the approval of the said A. B. and at the expense of the said branch business, and in such books all proper entries relating to the said branch business shall be made.

5. The said books and all letters, documents, writings and things which concern the said branch business shall be kept at the said premises and shall not be removed therefrom, and the said C. D. and the said A. B., by himself or any person appointed by him, shall be free at all times to cast up, copy, and examine the said books, letters, documents, writings and things.

6. The remuneration of the said C. D. shall be one half of the net profits of the said branch business, which shall be ascertained as far as possible by making up the books every 1st day of January and 1st day of July.

7. The business is to be carried on in the name of the said A. B., and the said C. D. is not to be or hold himself out as a partner with the said A. B.

8. If after the profits are ascertained and divided any loss should occur or any claim be made against the said A. B. in respect of the said branch business and in respect of the period for which the accounts have been so taken and the profits divided, and such loss or such claim has not been provided for, the said C. D. shall be required to contribute equally to such loss, but only to the extent of whatever profit he shall have received beyond profits at the rate of £150 by the year, it being the intention that he shall be entitled to profits at that rate (if earned) without being liable to bring them into account in making good such losses and claims.

9. This agreement shall be in force for seven years, or until

sooner ended by six months' notice in writing by one of the parties hereto to the other of them.

In Witness whereof the parties hereto have hereto set their hands the day and year first above written.

A. B.  
C. D.

Witness E. F.

*[Residence and occupation.]*



## CLASS VI.—LANDLORD AND TENANT.

1. I speak of the relationship of landlord and tenant only so far as it arises under a contract of letting at a rent in money.

The person letting is called the *lessor*, and the person to whom he lets is called the *lessee*. The time for which the letting is made, unless it is at will only, is called a *term*.

No precise words are required to constitute a lease. It is sufficient if it clearly appear that one party is to divest himself of the possession, and give it up to the other for a limited time; nevertheless, it is better to adhere to the usual forms in the words of letting.

No lease can be made for a longer period than three years from the making thereof, except by deed, *i. e.* by writing under seal.

Leases for three years from the making thereof, or for any less time, reserving a rent of not less than two-thirds of the full value, may be made by word of mouth, or by writing not under seal. Such leases will be void if made for three years from a future day; and therefore do not of themselves create the relation of landlord and tenant. But if the person with whom the agreement is made chooses to enter as a tenant, and pays a yearly rent,\* he will be a tenant from year to year.

2. These lettings by word of mouth, or by writing not under seal, are frequently confounded with agreements to let; so much so, as to be called *agreements*, a name which has been adhered to in these forms. Agreements to let are, however, very different from writings which constitute a present letting. If I agree that I will let to another for 1000 years, the agreement need not be by deed, but only in writing, and the Chancery Division will compel me to grant the lease, and the tenant to take it. For this reason, and to save the expense and trouble of an actual lease, people wishing to create a long term sometimes rely on a mere agreement to grant a lease for that time. The tenant enters and the land-

\* A rent may be yearly though payable half-yearly, quarterly, or according to any aliquot part of a year.

lord receives his rent; and though nothing more is really created at law than a tenancy from year to year, each party relies on the power which the Court can exercise to compel the other to grant or take the actual lease agreed for. This is not a good plan. The landlord's and tenant's remedies are not so good as under an actual lease; while, if the landlord were to sell the property to a person ignorant of the agreement, the intended tenant would have no power to compel the purchaser to grant him a lease.

In the following forms a deed creating a tenancy is called, as usual, a *lease*, an agreement not under seal creating a tenancy for not more than three years from the making thereof, is called an *agreement*, and an agreement for granting a lease is called an *agreement for a lease*.

Directions for the use of the following forms are given in the notes to them, and further information is given under the heads "Distress," and "Notices to Quit." Here I will only remind the reader, that where no time is fixed for the payment of rent under a yearly tenancy, or a tenancy for several years, it will be payable on the anniversary of the day on which the tenancy commenced.

In connection with the first eight forms which follow, I ought to point out that a person must not knowingly let *any house, room or part of a house* in which any person has been suffering from any dangerous infectious disorder without having a certificate of disinfection. This extends to an innkeeper taking in a guest. And a person who lets or shews for letting any house or part of a house must answer truly any questions put by the person negotiating as to whether any person has within six weeks suffered from such a disorder there. In Ireland, the period is three months.\*

#### I. AGREEMENT FOR LETTING AN UNFURNISHED LODGING.

Agreement made this            day of [*month and year*] between A. B. and C. D.

The said A. B. lets, and the said C. D. takes, the two rooms on the first floor of the house No.           , in            street, for a week, at the rent of            shillings, and so on, from week to week, until the tenancy is ended by a [*week's*] notice.

A. B.  
C. D.

\* 54 & 55 Vict. c. 76, s. 64, as to the metropolis; 38 & 39 Vict. c. 55, s. 129, as to the rest of England; 41 & 42 Vict. c. 52, s. 145 as to Ireland.

## II. AGREEMENT FOR LETTING A FURNISHED

Agreement made this            day of [*month and year*] between A. B. and C. D.

1. A. B. lets to C. D. the rooms on the first floor of the house No.           , in           , ready furnished, \*from the †            day of [*month and year*], and agrees to supply customary attendance, together with the use of suitable linen, plate, china, and glass, for a [*week*] at the rent of £            per week, and so on from week to week till the tenancy is ended by a [*week's*] notice on either side.

2. The said C. D. takes the said rooms, with such attendance and use, at the rent aforesaid, and agrees that if he ‡ shall damage the said rooms, or any articles used, or being therein, he will restore them to their present condition, or replace them (damage by reasonable wear and tear excepted).

A. B.

C. D.

## III. AGREEMENT FOR LETTING A FURNISHED HOUSE BY THE MONTH.

Agreement made this            day of [*month and year*] between A. B. and C. D.

1. The said A. B. lets, and the said C. D. takes, the house No.           , in            street, with the appurtenances, and the furniture and effects therein, for a month from the day of [*month and year*], at the rent of £            per month, and so on, from month to month, till the tenancy is determined by a month's notice on either side. §

If the said C. D., his family or servants, shall damage the said house, or any of the said furniture and effects, he shall

\* If the apartments are taken for the tenant's family, insert here "for himself and his family," or, "for himself, and his wife and child," as the case may be, as otherwise each party might mean a totally different thing, by the provision for "customary attendance" which follows.

† If the lodgings are taken from the day on which the agreement is signed, say here "from the date hereof." But the chief use of this kind of agreement is where it is desired to secure lodgings from a future day; in which case, the day mentioned here should be the day on which the tenancy is to commence, and from which the rent will begin to accrue.

‡ If the rooms are taken for his family, say here, "or any member of his family."

§ Sometimes a furnished house is worth more at one time of the year than another, and it is desirable to limit the tenancy to a certain time, and to provide that, if the tenant remain longer, he must pay a higher or a lower rent. In this case add to Clause 1 the words, "or, if no such notice is given, until the            day of [*month and year*]"—the day from which the altered rent is to be paid. The altered rent is provided for in the fifth clause.

restore them to their present condition, or replace them (damage by reasonable wear and tear excepted).

3. The said A. B. is to defray all outgoings in respect of the premises let.\*

4. The said A. B., or his agent, may enter upon and inspect the premises during the tenancy †on the first day of every month; but if the same falls on a Sunday, or public holiday, then on the first day thereafter which shall not be a Sunday or public holiday.

If the said C. D. continues the tenancy from the            day of [*month and year*] he shall pay thenceforth £            rent per month.

A. B.

C. D.

#### SCHEDULE.‡

One dining-room table, etc.

#### IV. AGREEMENT FOR A YEARLY TENANCY OF A HOUSE.

Agreement made this            day of [*month and year*] between A. B. and C. D.

1. The said A. B. lets, and the said C. D. takes, the house No.           , in            street,§ with the appurtenances, from the            day of [*month and year*],|| from year to year, at the yearly rent of £           , payable quarterly on the usual quarter days.¶

2. The said C. D. will not assign or underlet, or part with the possession of the premises, nor let any portion thereof as lodgings, nor use the same save as a dwelling-house.

3. The said C. D., when the tenancy ends, shall deliver up

\* This refers to rates and taxes. If the landlord leaves servants in the house, or in any lodge or outbuilding, he had better continue to pay them their wages, in which case add here the words, "and to pay the wages of servants left living in the house, or any of the premises let."

† This enables him to ask for damages as they arise, and to know whether to give notice or not.

‡ This schedule may be appended to the agreement, or may be separate. In either case it should be signed by both parties.

§ State the city, town, or parish, if you please. If you cannot describe the house by number and street, do so in some other way, as the house called Pendennis, or the house occupied by John Jackson, or the empty house two doors from the George Inn, etc. If a garden, or other land, goes with the house, it should be described, and, if the premises require a lengthy description, describe them, as in the next form.

|| If it is desired to create a tenancy which cannot be ended by half a year's notice till the end of the *second* year, insert here the words, "for a year, and so on," from year to year.

¶ If the letting is in the middle of a quarter, so that a full quarter's rent ought not to be paid on next quarter day, add here, "the rent being apportioned on the first and last payments for fractions of quarters."

the premises in good order and repair, reasonable wear and inevitable accident excepted.

A. B.  
C. D.

#### V. AGREEMENT LETTING A HOUSE AND LAND FOR THREE YEARS.

Agreement made this       day of [*month and year*] between A. B., of       , and C. D., of       .

The said A. B. lets, and the said C. D. takes, the premises described in the schedule hereto,\* with the appurtenances from the date hereof,† for the term of three years, at the yearly rent of £       , payable quarterly, on the usual quarter days.

2. The said C. D., when the tenancy ends, shall deliver up the premises in good repair and order, reasonable wear and inevitable accident excepted.

A. B.  
C. D.

#### SCHEDULE.

All that messuage or tenement known as the King's Mill, situate in the parish of Dayton, with the appurtenances, together with the orchard and outbuildings in the rear thereof, and the seven acres of pasture, or thereabouts, usually held therewith.‡

A. B.  
C. D.

#### VI. THE LIKE OF A DWELLING-HOUSE, WITH PROVISION FOR REPAIR AND RE-ENTRY.

[*Commence as in the last preceding form.*]

1. The said A. B. lets, and the said C. D. takes, the house No.       , in       street, with the garden and appurtenances, from the date hereof,§ for three years, at the yearly rent of £       , payable on the usual quarter days.

2. The said A. B., his executors, administrators and assigns (hereinafter called the lessors) shall keep the outside and fabric of the building in good repair.

3. The said C. D., his executors and administrators (herein-

\* The premises can be inserted as in the preceding forms, but this is the most convenient way of describing them where the description is lengthy.

† Remember that if the tenancy begins from a future day the agreement will be invalid as a present lease or letting, and, if the tenant enters and pays rent, he will only be a tenant from year to year. See Class vi, sec. 1. You may make it for three years from a past day, but then you must provide against paying a full rent on the next quarter day.

‡ If there is a plan say "all which premises are delineated in the plan drawn in the margin [*or on the back*] of these presents are therein coloured *red*."

See note to these words in last preceding form.

after called the lessees), shall not assign or underlet, without the consent in writing of the said lessors, nor use the premises for any purpose of trade, manufacture, or education, except the taking of not more than three pupils,\* and, when the tenancy ends, shall deliver up the premises in good repair and order, reasonable wear and inevitable accident excepted.

4. The said lessors may twice a year enter upon and inspect the premises, and if the lessees shall neglect to pay any rent for twenty-one days after the same shall be due and demanded, or shall fail in discharging any of their other liabilities, the said lessors may also enter upon and repossess the premises, as if this agreement had not been made.

A. B.  
C. D.

## VII. AGREEMENT FOR A LEASE OF A HOUSE.

Agreement made this       day of [*month and year*] between A. B., of       , and C. D., of       .

1. The said A. B., for himself, his heirs, executors, and administrators, agrees to grant, and the said C. D., for himself, his executors and administrators, agrees to take a lease of all that messuage or tenement known as       ,† for twenty-one years,‡ at the yearly rent of £       , payable half-yearly, clear of all deductions except property tax, the first payment to be made on the       day of [*month and year*] next.

2. The lease shall contain covenants on the lessee's part to pay rent, rates, and taxes, to keep the premises in repair, to insure the same against fire to the amount of £       , in an office to be named by the lessors, and in the joint names of the lessors and lessees, and at all times to produce to the lessors the receipt for the last premiums due, and also to rebuild or repair the premises if injured by fire or otherwise, and a covenant not to assign or underlet, or alter the premises without licence, nor to use the same for any of the following trades       , nor any noisome, dangerous, or offensive trade or business.

3. The lease shall contain the following provisoes, namely, That the lessors may twice a year enter on and inspect the premises, That in case of the lessee's default in the production of the receipt for any premium as aforesaid, the lessors may insure at the lessee's expense. That the lessors may re-enter on and re-possess the premises in case the lessees shall make default

\* If this restriction is not desirable omit from "education" to "pupils" inclusive, and put the "or" before "manufacture."

† Describe it by the name by which it is known, or by number and street, or other situation, or omit the words "known as," and say "described in the schedule hereto," or "in the first schedule hereto," as the case may be.

‡ Or "for seven, fourteen, or twenty-one years, at the lessee's option," or "for seven, fourteen, or twenty-one years, at the option of the lessors or lessees."

in payment of any rent for twenty-one days after the same shall be due and demanded, and for non-performance of any of the other covenants, save that for insurance; And that the rent may be suspended or abated during such time as the whole or part of the premises may remain untenable or unless in consequence of damage or destruction by fire, flood, storm, or tumult, the amount of such suspension or abatement to be determined, in case of dispute, by an arbitrator, if the parties can agree upon one, otherwise by X. Y.,\* or some person to be appointed by him.

4. The lease shall contain a covenant on the lessor's part for quiet enjoyment.

5. The expenses of the lease and a counterpart thereof shall be borne by the lessors and the lessees equally.

A. B.

C. D.

#### VIII. LEASE IN PURSUANCE OF THE ABOVE AGREEMENT.

This Indenture, made this            day of [*month and year*] between A. B., of            [*occupation or description*], of the one part, and C. D., of            [*occupation or description*], of the other part, Witnesseth as follows:

1. The said A. B. demises to the said C. D., his executors, administrators, and assigns, all that messuage or tenement known as            † (and delineated and coloured *red* in the plan drawn in the margin hereof),‡ with the appurtenances, from the            day of [*month and year*], for the term of twenty-one years, at the yearly rent of £            , payable half-yearly, clear of all deductions except property tax, the first payment to be made on the            day of [*month*] next.

2. The said C. D., for himself and his assigns, covenants with the said A. B., his heirs and assigns§ (hereinafter called "the lessors"), That the said C. D., his executors, administrators, and assigns (hereinafter called the lessees), will pay the rent as aforesaid, and all rates and taxes except landlord's property tax, And will, at the lessee's cost, maintain, and at the expiration of the tenancy deliver up, the premises in good order and repair; And will keep the premises insured against fire to the amount of £            , in the            office, in the joint names of the lessors and lessees, And will at all times produce to the lessors the receipt for the last premium, And

\* The person here named need not necessarily be a person who is fit to decide the question himself; any man of character would be fit to *name* an arbitrator, as to which he would naturally consult the parties. It is a good plan to give the name of a public officer, thus:—"The Architect for the time being of the City of London."

† Or "described in the schedule hereto," or "described in the first schedule hereto." See note to clause 1 in the last preceding form.

‡ If there is no plan omit the words in brackets.

§ If A. B., the lessor, himself holds under a lease, say "his executors, administrators and assigns."

will rebuild or repair the premises if injured by fire or otherwise, And will not assign, underlet, or alter the premises without the written license\* of the lessors or one of them, nor use the same for any of the following trades ; nor any noisome, dangerous, or offensive trade or business.

3. Provided (1) that the lessors may twice a year enter upon and inspect the premises; (2) that in case of the lessees' default in the production of receipts for premiums as aforesaid, the lessors may insure at the lessees' expense; (3) that the lessors may re-enter on, and repossess the premises, in case the lessees shall make default in payment of the rent for twenty-one days after the same shall have been due and demanded, and for the non-performance of any of the other lessees' covenants herein contained, save that for insurance, and (4) that the rent may be suspended or abated during such time as the whole or part of the premises may remain untenable or useless, in consequence of damage or destruction by fire, flood, storm, or tumult, the amount of such suspension or abatement to be settled, in case of dispute, by an arbitrator to be agreed upon, or, if the parties cannot agree, then by X. Y.,† or some person to be named by him.‡

4. The said A. B. covenants with the lessees that, the lessees' liabilities being discharged, they shall occupy the premises without interruption from the lessors.

In Witness whereof the said parties have hereto set their hands and seals, the day and year first above written.

A. B. [*Seal.*]

C. D.

§ Signed, sealed, and delivered, in the presence of

E. F.

3. The Statute 8 and 9 Vict., c. 124, passed 8th August, 1845, was made to facilitate the granting of leases by a concise form; the mode adopted being the substitution of a short clause for each full clause in ordinary use,

\* A general license may be given to do all or any one of these acts at any time or in any way; but no license for any particular assignment, underletting or alteration, will be available except for the purpose to which it purports to apply.

† See note to corresponding clause in the last preceding form.

‡ If the lease is to be determinable at the end of seven or fourteen years, add here "and (5) that this lease may be determined at the end of the first seven or fourteen years by the lessees giving six calendar months' previous written notice, their liabilities being discharged before such notice expires." If the lease may be determined by either party at these times, say "and (5) that this lease may be determined at the end of the first seven or fourteen years by six calendar months' previous written notice on either side, the lessees discharging their liabilities before the expiration of any notice given by them."

§ If each executes at a different time, use the form of attestation numbered ii, given in Class xii.



with an enactment that the statutory clause should mean the same as the full clause. The Act also contains one or two rules of construction which help to abbreviate the document. In the first place the deed, unless special exceptions are made, will be treated as including all those outhouses and gardens and rights of way and light, and other appurtenances, which belong to the property leased;\* then the singular number includes the plural, and the masculine gender includes the feminine, and the word "party" includes corporate bodies, whether collegiate or not.

I will now give a lease composed of the statutory short clauses arranged and numbered as in the statute; but the ordinary clauses for which they are substituted, and which are given in the schedule of the Act, would occupy too much space. It is enough to say that the short clauses here given are equivalent to the long ones in common use on the same subjects: in fact, the short clauses mean all that they are intended to mean.†

The form as given in the Act contains a great number of clauses, more probably than would often be wanted in any one lease; but it will not be difficult for the reader to select such of them as would apply to his own case, or to substitute the statutory short clauses for those contained in the other precedents which I have given.‡ One caution, however, is needed, namely that, in order to give the statutory short forms any greater effect than they would otherwise have, it is necessary that the lease *should be expressed to be made in pursuance of the Act.*§

\* This mode of abbreviation has since been applied to all conveyances of land with houses by the Conveyancing Act, 1881, s. 6.

† Any of the clauses may be omitted, and any clause may be altered by adding words to the short clause representing it, and new clauses may be added at length, without affecting the validity of the lease, provided it is expressed to be made in pursuance of the Act.

‡ These, however, are so short as to be scarcely worth abridging; the equivalent of the ordinary clause being given by them in about one-third the usual space.

§ The Act has not been popular with lawyers, who are paid by length, and although it contains a clause enabling the taxing officer to allow payment for the lease according to skill and not length, it was thought better to secure the certain remuneration for long clauses rather than a doubtful allowance for skill in selecting the short ones. Clients are seldom aware of the existence of the Act, and, if they were, they would be told that it is better for every deed to contain its language on its face, and not by reference to an Act of Parliament. There is some truth in this, but the Conveyancing of 1881 substitutes three words for a whole skin of parchment.

## IX. STATUTORY SHORT FORM OF LEASE.

This Indenture, made this       day of *[month and year]* in pursuance of an Act to facilitate the granting of certain leases between *[here state the names of the parties and the recitals, if any]*, Witnesseth that the said *[lessor or lessors]* doth *[or do]* demise unto the said *[lessee or lessees]*, his *[or their]* executors, administrators, and assigns.

All, etc. *[parcels]\** from the       day of *[month and year]*, for the term of       †thence ensuing; yielding therefor during the said term the rent of *[state the rent and mode of payment]*.

1. That the said *[lessee]* covenants with the said *[lessor]* to pay rent;

2. And to pay taxes;

3. And to repair;

4. And to paint outside every       year;

5. And to paint and paper inside every       year;

6. And to insure from fire in the joint names of the said *[lessor]* and the said *[lessee]*.

To show receipts;

And to rebuild in case of fire;

7. And that the said *[lessor]* may enter and view the state of repair, and that the said *[lessee]* will repair according to notice;

8. That the said *[lessee]* will not use the premises as a shop;

9. And will not assign without leave;

10. And that he will leave the premises in good repair.

11. Proviso for re-entry of the said lessor on non-payment of rent or non-performance of covenants.

12. The said *[lessor]* covenants with the said *[lessee]* for quiet enjoyment.

In Witness whereof the said parties have hereto set their hands and seals.

A. B. (lessor). *[Seal.]*

C. D. (lessee). *[Seal.]*

Signed, sealed, etc. *[as in Form viii, unless one of the other forms of attestation given in Class XII should be necessary]*.

## X. LEASE OF A FARM FOR SEVEN YEARS, WITH COVENANT FOR RENEWAL.

This Indenture, made this       day of *[month and year]* between A. B., of       , of the one part, and C. D., of       of the other part, Witnesseth as follows:—

1. The said A. B. demises to the said C. D., his executors and administrators, the premises described in the First Schedule hereto, with their appurtenances, from the       day of *[month*

\* That is to say, you are here to describe the tenement leased as "all that farmhouse and lands called The Priory Farm," or "all that messuage or tenement called No.       , in       street.

† The number of years for which the premises are let.

*and year*],\* for seven years, at the yearly rent of £ , payable by equal half-yearly payments, the first payment to be made the       day of [*month and year*] next.

2. The said C. D. covenants with the said A. B., his heirs and assigns,† (hereinafter called “the lessors”), that the said C. D., his executors and administrators (hereinafter called “the lessees”) will pay the rent as aforesaid, and defray all outgoings chargeable by law on the premises, except land tax; That the said lessees will maintain, and, at the end of the term, deliver up the premises, and all buildings, and all brick, stone, and wood-work thereon, in good repair, and will not assign, underlet, or alter the premises, or any part thereof, without the written license of the lessors or one of them; and that the said lessees will observe the stipulations in the Second Schedule hereto.

3. Provided that the lessors, their agents and servants, shall have the exclusive right of sporting and fishing on the premises, and may enter thereon for the purpose of digging for minerals, felling and removing timber, and managing the plantations, paying a reasonable compensation for injury done to the surface; That the lessors may at all times enter on and inspect the premises; And that if the lessee‡ shall make default in payment of any rent for twenty-one days after the same shall have been due and demanded, or in the performance of any covenants herein contained, the lessors may re-enter on the premises and re-possess the same, discharged from this lease.

4. The said A. B. covenants with the lessees that, the lessees’ liabilities being discharged, they shall occupy the premises without interruption by the lessors, or any person claiming through them or any of them; that the lessors will, on demand by the lessees, find such stone, brick, slates, tiles, pipes, timber and lath in the rough, as may be necessary for repairs or for draining, such materials to be drawn to the premises at the lessees’ cost; That this lease shall be renewable at its expiration by six calendar months’ previous written notice from the lessees, and at their cost; And the term, rent, and covenants (including this covenant)‡ of the renewed lease shall correspond with those of this lease.

In Witness whereof [*as in Form viii*].

A. B. [*Seal.*]

C. D. [*Seal.*]

Signed, sealed, etc. [*as in Form viii, unless one of the other forms of attestation given in Class XII should be necessary*].

\* Or from the “date hereof.”

† If A. B. is the holder of a lease and is granting an underlease, say “his executors, administrators and assigns.”

‡ The force of these words is to include a covenant for renewal in the renewed lease, so as to make the term virtually last for twenty-one years from its commencement. If it is not desired to have more than one renewal, omit these words.

## THE FIRST SCHEDULE.

All that messuage or farmhouse, buildings, and several closes of land situate in the county of \_\_\_\_\_, called Monk's Grange, with the appurtenances, and all rights, easements, and privileges heretofore accustomed to be enjoyed therewith, or accepted as part thereof.

## THE SECOND SCHEDULE.

The lessees shall at all times keep clean and remove all obstructions from all ditches and watercourses and the outfalls of drains; shall consume all the hay, straw, and haum upon the premises, and spread the dung at proper seasons, and on that part of the land which most requires it; shall keep the land clean, and cultivate it according to the most improved custom of the country; and shall not cut down, grub up, lop or prune any maiden trees, nor lop any pollards, nor break up or convert into tillage any meadow or pasture which shall have been grass seven years, nor take more than two white straw crops in succession, nor grow potatoes or any vegetables for sale, nor grow rape, hemp, flax, or woad without the lessors' consent in writing.

The lessees shall draw to the premises such materials as they shall require the lessors to furnish for repairs or draining.

The lessees shall not be entitled, on quitting the premises, to the off-going crop, unless they pay the rent and outgoings for the year during which the crop grows and unless they shall have made a reasonable quantity of clean fallow on the strong soils and shall have well prepared for and sown with turnips a reasonable quantity of the light soils.

The lessees, at the expiration of the term, shall sell such crops and other things as are usually and lawfully sold by the outgoing to the incoming tenant, to be valued\* according to the custom of the country, and in ascertaining the price to be paid upon such sale the condition of the premises shall be estimated, and full compensation for any dilapidation, mismanagement, or defect in the condition of the same or any part thereof, shall be deducted from the price to be paid to the said lessees, and if such compensation shall exceed such price, the excess shall be recoverable as rent in arrear.

A. B.†  
C. D.

The foregoing lease, if it contained no covenant not

\* Or you may appoint some person or such person as he may appoint as valuer, for instance, you may say to be valued "by the steward for the time being to the Duke of \_\_\_\_\_, or such person as the steward may appoint." The advantage of the latter form is that there is always certain to be a person corresponding to the description, and there are none of the difficulties so often attending a double arbitration and umpirage.

† It is desirable that the schedule should be simply signed by each party.

to assign, or if a license to assign were granted (see Form xiii), might be assigned by the following form :—

#### XI. ASSIGNMENT OF THE FOREGOING LEASE.

This Indenture, made this            day of [*month and year*], between C. D.,\* of           , of the one part, and E. F.,† of           , of the other part, Witnesseth as follows :—

1. The said C. D., in consideration of £            paid to him by the said E. F. (the receipt whereof the said C. D. acknowledges) *as beneficial owner* assigns to the said E. F., his executors and administrators, the premises described in Schedule hereto, during the residue of the term of    ‡ years created by a lease dated the            § day of [*month and year*], from A. B. to the said C. D.

2. The said E. F. covenants with the said C. D. that the said E. F., his executors and administrators, will keep the said C. D., his heirs, executors, and administrators, indemnified against all liabilities under the said lease, subsequently to the execution of these presents.

In Witness whereof [*as in Form viii*].

C. D. [*Seal.*]

E. F. [*Seal.*]

Signed, sealed, etc. [*as in Form viii, unless one of the other forms of attestation given in Class XII should be necessary*].

#### THE SCHEDULE.

[*The same as the First Schedule in the Lease which is assigned.*]

C. D.||

E. F.

4. If the owner of the lease, who assigns it, is the original lessee, as in the above case, and the person to whom the assignment is made fails to pay the rent or perform the covenants, then the original lessee is liable to the landlord. It is, therefore, desirable to secure the performance of the covenants and to enable the lessee to obtain possession of the premises again, in case of any breach of covenant on the tenant's part, so that, if the lessee has to bear the burden, he may at least enjoy the land. For this purpose it is better not to dispose of the lease by assignment, but to make an under-lease for a day or two short of the original term; the under-lease following the words of the original lease with a proviso for re-entry for any breach of covenant.

\* The present lessee.

† The assignee.

‡ The number of years for which the original lease was granted.  
§ The date of the original lease.

The schedule should be simply signed by both parties.

The lessee thus becomes a lessor or landlord instead of a mere assignor.\*

5. Where the lessee desires to lease the premises at an increased rent, the underlease is of course the only instrument which can be used. By under-letting for a day or two less than the whole term, the lessee keeps to himself a reversion expectant on the expiration of the underlease; and this is necessary to enable him to distrein for his rent in case it is not paid. The following is the form of an underlease, supposing Form x. to be the original lease :

## XII. UNDERLEASE.

This Indenture, made the            day of [*month and* between C. D., of           , of the one part, and E. F., of of the other part, For granting to the said E. F. an underlease of the under-mentioned premises, held by the said C. D. under a lease dated the            day of [*month and year*], from A. B., of           , Witnesseth as follows :—

1. The said C. D. demises to the said E. F., his executors and administrators, the premises described in the First Schedule† hereto, with their appurtenances, from the date hereof, for            years,‡ all but three days, at the yearly rent of £           , payable by equal half-yearly payments, the first payment to be made on the            day of [*month*] next.

2. The said E. F., for himself, his heirs, executors and administrators, covenants with the said C. D., his executors, administrators and assigns (hereinafter called “the lessors”), that the said E. F., his executors and administrators (hereinafter called “the lessees”), will pay the rent as aforesaid, and defray all outgoings, chargeable, by law, on the premises except land tax; That the lessees will maintain, and at the end of the term

\* The assignee of a lease, as long as he keeps it, is liable to the lessor for payment of rent and observance of covenants. There is no “privity of contract” between the lessor and the assignee, but the liability arises from “privity of estate.” The assignee, therefore, on himself assigning the lease, becomes free from this liability to the lessor, having put an end to the only relationship that existed between them. If the lease is so burdensome that no responsible person will take it, the assignee may escape liability by assigning to a pauper. In one case (*Rowley v. Adams*, 4 My. and Cr., 534) the executors of an assignee were ordered by the Court to relieve their testator’s estate in this way. But if the assignment contains the covenant to indemnify the assignor, as in the above form, the assignee continues bound to indemnify the assignor against the burden of the rent and covenants to the end of the term.

† Here, as elsewhere, the parcels may be described in the body of the deed; and if they are so described therein, the same can be done in the underlease instead of using a schedule.

The residue of the original term.

deliver up the premises and all buildings and all brick, stone, and woodwork thereon, in good repair; And will not assign, underlet, or alter the premises or any part thereof without the written consent of the lessors or one of them; And will observe the stipulations in the Second Schedule hereto.

3. Provided that the said A. B., his heirs and assigns, his and their agents and servants, shall have the exclusive right of sporting and fishing on the premises, and may enter thereon for the purpose of digging for minerals, felling and removing timber and managing the plantations, paying a reasonable compensation for injury done to the surface; That the said A. B., his heirs and assigns, and the lessors, may at all times enter on and inspect the premises; And that if the lessees shall make default in payment of any rent after the same shall have been due and demanded or in the performance of any covenant herein contained, the lessors may re-enter on the premises and repossess the same, discharged from this lease.

4. The said C. D. covenants with the lessees that, the lessees' liabilities being discharged, they shall occupy the premises without interruption by the lessors or any person lawfully claiming through, under, or in trust for them or any of them; That the lessors will on demand 'oy the lessees find such stone, brick, slates, tiles, pipes, timber, and lath in the rough as may be necessary for repairs or for draining, such materials to be drawn to the premises at the lessees' cost; That this lease shall be renewable at its expiration by \*twelve calendar months' previous written notice from the lessees, and at their cost; And the term, rent, and covenants (including this covenant†) of the renewed lease shall correspond with those of the said original lease.

In Witness whereof the parties hereto have hereto set their hands and seals the day and year first above written.

C. D. [Seal.]

E. F. [Seal.]

Signed, sealed, etc. [*follow one of the forms of attestation given in Class XII*].

#### THE FIRST SCHEDULE.

[*The same as in the original lease.*]

#### THE SECOND SCHEDULE.

[*The same as in the original lease.*]

#### XIII. LICENSE TO ASSIGN A LEASE.‡

Subject to the discharge of the lessees' obligations under a lease dated the            day of [*month and year*], whereby A. B.,

\* C. D. has to give six months' notice by the original lease, so his underlessee must give him more. †

† See note to these words in the original lease, Form x.

‡ Licenses to do an act covenanted not to be done are confined

of           , leased to C. D., of           , the lands called Monk's Grange, therein more particularly described, the said A. B. grants license to the said C. D. to assign his interest in the premises to E. F., of           , his executors and administrators.

Dated this           day of [*month and year*].

A. B.

Witness G. H.

[*Residence and occupation.*]

#### SURRENDER.

6. "Surrender" is when the tenant yields up the premises before the end of the term to the lessor, or landlord, and the latter accepts them back from him. This surrender should always be in writing; but, if the tenancy is created by a deed under seal—as all tenancies for more than three years from the making thereof must be (*see Class VI, sec. 1*)—the writing must also be a deed. The surrender should be executed in duplicate by both landlord and tenant and each party should keep one of the duplicates. The following is the form of a

#### XIV. SURRENDER OF TENANCY FOR NOT MORE THAN THREE YEARS CREATED BY WRITING NOT UNDER SEAL.

Agreement made this           day of [*month and year*], between C. D.,\* of           , and A. B.,† of           .

Whereas, by agreement between the said parties dated the           day of [*month and year*], the said C. D. became, and still is, tenant to the said A. B. of a messuage or tenement called King's Mill, in the parish of Dayton, with the appurtenances, and of certain other tenements usually held therewith, It is Witnessed that, in consideration of being relieved from the said tenancy, and all future liabilities arising therefrom, the said C. D. hereby surrenders the premises, and all his interest therein, to the said A. B., and the said A. B., in consideration of such surrender, accepts the same, and determines the said tenancy, and discharges and releases the said C. D. accordingly.

C. D.

A. B.

#### XV. SURRENDER IN THE LIKE CASE BY THE EXECUTOR OF THE FORMER TENANT.

Agreement made this           day of [*month and year*], between E. F., of           , and A. B., of           .

Whereas, by an agreement dated the           day of [*month*

to the act licensed, and do not get rid of the covenant, which will still apply to forbidding other such acts.

\* The tenant.

† The landlord.



*and year,*] between the said A. B. and C. D.,\* the said C. D. became tenant to the said A. B. of a certain messuage or tenement called [*describe it as before*], and whereas, on or about the       day of [*month and year*], the said C. D. died, having appointed as his executor the said E. F., who has proved his will; and whereas the said E. F. desires to be relieved from the burden of the said tenancy, It is Witnessed that, in consideration, etc. [*as above*], the said E. F. hereby surrenders the premises and all his interest therein to the said A. B., and the said A. B., in consideration of such surrender, accepts the same, and determines the said tenancy and discharges and releases the said E. F. accordingly.

A. B.  
E. F.

e.

#### XVI. SURRENDER OF A LEASE MADE BY DEED.

This Indenture, made this       day of [*month and year*], between C. D., of       , of the one part, and A. B., of       , of the other part, Witnesseth as follows:—

Whereas, under an Indenture made the       †day of [*month and year*], between the said A. E., of the one part, and the said C. D., of the other part, the said C. D. became, and has since continued, tenant to the said A. B. of a certain messuage or tenement called, etc. [*describe the premises or refer to a schedule describing them*], and the said C. D. desires to be relieved from the burden of the said tenancy, It is Witnessed that in consideration of, etc. [*follow Form xiii*].

A. B. [*Seal.*]

C. D. [*Seal.*]

Signed, sealed, etc. [*follow one of the forms of attestation given in Class XII*].

#### DISTRESS.

*When a distress may be made.*

7. Distress is a summary mode of recovering rent. Rent reserved in a lease is not payable till midnight of the day specified in the lease for the payment of it; and, therefore, as no distress can be made, except between sunrise and sunset, it is unlawful to distrein for rent till the day after that on which it is due. Rent may be due by the terms of the letting, or by the custom of the country at the commencement, instead of at the close of a half-year, or other period. This is called fore-hand rent, or rent payable in advance, and it may be distreined for on any day after that on which it is payable.

\* The deceased tenant.

† Date of lease.

If the relation of landlord and tenant continues, the landlord may not recover by distress more than six years' arrears of rent.

If the holding is under the Agricultural Holdings (England) Act, 1883,\* the landlord cannot distrein for any rent which became due more than a year before the distress, unless, by the course of dealing between landlord and tenant, the latter has been allowed to defer the payment of rent for a quarter or half year after it is due, in which case the rent is to be reckoned for this purpose as having become due at the end of the quarter or half year. So that—apart from the course of dealing above mentioned—the landlord to whom half a year's rent is due on Lady Day this year cannot distrein for it after Lady Day next year.

8. After the expiration of a lease the landlord cannot distrein, unless he does so within six months; and then only if his own title continues, and the same tenant, or his executor or administrator, is in possession.

•  
*What may be taken.*

9. The general rule is, that all personal chattels found on the premises may be distreined for rent, whether they are the property of the tenant, or of a third person.

But there is an exception to this rule in the case of fixtures. Fixtures are things affixed to the freehold, and which have therefore become part of the thing let, as a millstone, the anvil in the smith's shop, kitchen, ranges, stoves, coppers and grates. The three latter articles, and others like them, are not distreinable, although they might be removed by the tenant during his term, and for that reason might be taken under an *execution*. In addition to the fact that they are affixed to the freehold, there is another reason why the law will not allow these things to be distreined, namely, that they cannot be severed without injuring them. How closely a thing need be affixed to the house or land to make it a fixture, is not easy to determine. Looking-glasses and carpets are not fixtures, though one may be screwed, and the other nailed to the house. A stocking-machine screwed into the floor to keep it steady does not thereby become a fixture; and it has been

\* This Act only applies to a holding which is wholly agricultural, or wholly pastoral, or in part agricultural and as to the rest pastoral, or in whole or in part cultivated as a market garden, and does not apply to any holding of whatever nature let to a tenant during his continuance in any office, appointment or employment held under the landlord (*sec. 54 of the Act*).

decided that a portion of the machinery used for spinning cotton, and which was fixed by screws to the wooden floor of a mill, another part of it being fastened by screws sunk into holes in the stone flooring, and secured by molten lead poured into them, was distreinable for rent.

10. There is another exception to the rule in case of goods of a stranger, which are upon the premises for the purpose of being wrought or managed by the tenant in the way of his business. Thus, if I send cloth to a tailor to be made into a coat, or send my horse to a smith to be shod, or my goods to a factor or auctioneer to be sold, or my watch to a watchmaker to be repaired, these things are not distreinable by the landlords of the persons to whom I have entrusted them.

11. Another exception is in the case of things in actual use. Thus, while any one on the premises is working with tools, or is riding a horse, those tools and that horse are exempt from distress.

12. The articles above mentioned, namely, fixtures, things left on the premises to be dealt with in the way of the tenant's trade and implements in actual use, are absolutely privileged; but there is a fourth exception in favour of beasts of the plough and implements of trade or husbandry, by which they become conditionally privileged from distress; for they cannot be taken if there are any other personal chattels on the premises sufficient for a distress.

13. In addition to the personal chattels found on the premises, the landlord is empowered by statute to distress corn, grass and other growing crops. But he is not bound to take these before taking beasts of the plough and implements of trade or husbandry.

14. The Lodgers' Goods Protection Act, 1871, which applies to England and Ireland only, has added another exception. Where the tenant whose rent is in arrear has a lodger and the landlord takes the lodger's goods for the tenant's rent, the lodger may set his goods free by making a written declaration and paying to the distreinor any rent due from himself,—not exceeding of course the rent due from the tenant to the landlord.

The declaration is not required to be a statutory declaration but is merely a statement, although, if it is false, the person who makes it is guilty of a misdemeanour. It may be given after the seizure or when it is threatened. It must state that the tenant has no property or beneficial interest in the lodger's goods, an inventory of which is to be annexed and signed by the

lodger. It must also state what rent, if any, is due from the lodger to the tenant and for what period. This rent, or sufficient of it, the lodger must pay to the bailiff, or person conducting the distress, and his receipt will be a good discharge. A form of declaration\* is given in what follows: see Form xxiv.

15. Another exception is created by the Railway Rolling Stock Protection Act, 1872, which prevents railway engines and carriages, when found on "works," from being distrained for rent due by the lessee of the works. A "work" includes any colliery, quarry, mine, manufactory, warehouse, wharf, pier, or jetty in or on which is any railway siding.

16. The next exception which has to be mentioned arises under the Agricultural Holdings Act, 1883, if the holding is under that Act (see note at the beginning of the introduction to "Distress," s. 7 *ante*).

Where the tenant of such a holding has taken in live stock to feed "at a fair price to be paid for such feeding by the owner," the landlord must not take the stock unless there is no other sufficient distress, and, if he does take it for want of other distress, he is not to hold it for more than the owner has agreed to pay for the feeding or any balance due on account of it, and must release it on being paid such amount.

Where the tenant has made an agreement under which agricultural or other machinery has been brought on the land for use in the conduct of the tenant's business, or he has got live stock\* belonging to another person for breeding purposes only, the machinery and the stock are exempt from distress.

This list of exceptions received an addition by the Law of Distress Amendment Act, 1888, which protects from distress for rent "any goods or chattels of the tenant or his family which would be protected from seizure in execution under s. 96 of the County Courts Act, 1846, or any enactment amending or substituted for the same." The corresponding section now is s. 147 of the County Courts Act, 1888, which refers to "the wearing apparel and bedding of such person and his family and the tools and implements of his trade to the value of

\* If the goods are not given up after he has given the declaration and inventory to the bailiff, the lodger can apply to a magistrate for an order for restoration, and two magistrates or a stipendiary magistrate may inquire into the matter and make the order. An action will also lie against the landlord. But a declaration served on the occasion of one distress will be no protection in case of a subsequent distress, though for the same rent.

*Where a distress may be taken.*

17. The rule is, that the distress must be on the premises when it is taken, or, by 11 Geo. 2, c. 19, s. 8, if it belongs to the tenant on any common belonging to the premises let.\* But to this there are two exceptions:—(1) Where the landlord or his agent sees the tenant's cattle grazing on the premises, but before he can take them they are driven off, he may follow and distrein them. (2) Where the tenant or any one on his behalf, has fraudulently or secretly removed his goods from the demised premises, *on or after* the day on which his rent is due, the landlord may, at any time within thirty days, follow and distrein them wherever they may be found, unless they have been sold *bôna fide*, and for value.† But this, the reader will see, does not apply to goods of a stranger, who may remove his goods at any time before they are taken.

*How the distress should be taken.*

18. The landlord may either distrein in person or by an agent or bailiff. The authority is usually given to this person by warrant of distress. See Forms xvii, xviii. The bailiff must be a person authorized to act as such by a certificate under the hand of a County Court Judge or Registrar. The certificate may either be "general," giving him authority to lay distress for rent anywhere in England or Wales, or "special," authorizing him to levy a particular distress. Either certificate may be obtained from the Judge of a County Court: the Registrar has power to issue the latter only.‡ (*Law of Distress Amendment Act*, s. 7.)

\* Where the same tenant, therefore, owes rents for two places under separate lettings, be careful not to distrein on one of them for the rent of both.

† The Statute by which this severe remedy is given to the landlord (11 Geo. 2, c. 19) must be strictly followed, or his proceedings will not be justifiable. If the goods are secured in a building or yard, or otherwise, he must be attended by a peace officer, and if they are secured in a house, he must apply to a magistrate before breaking it open.

‡ By the rules made under the Act, a fee of 5s. 4s. charged for the general certificate and 3s. 6d. for the special certificate. For taking a deposit as security for good conduct, the charge is 4s., and for approving a bond or guaranty for the same purpose, 10s. 6d. Either certificate is to be given to any proper person applying for it, but he must not be an officer of a County Court, unless he was such officer before the date of the Act, 31st August, 1888. A practising solicitor, on payment of the fees, is entitled to a certificate. If the

. Although by sec. 7 of the Law of Distress Amendment Act, a person who has no certificate under the Act is guilty of a trespass if he levies a distress as bailiff, there is nothing to prevent the landlord himself levying the distress and putting a man in possession without employing a bailiff at all.

19. If the distress be taken in a dwelling-house, the applicant is not rated at £25 a year, he may be required to give security for £20 if he asks for a general certificate, and for £5 if he asks for a special certificate. The security may be by bond, deposit or guaranty to the satisfaction of the Registrar.

The scale of charges and expenses allowed by the Rules made by the Lord Chancellor under the Act is as follows:—

SCALE I.—*Where the sum demanded and due exceeds £20.*

For levying distress

3 per cent. on any sums exceeding £20 and not exceeding £50

2½     "     "     "     £50     "     "     £200

1     "     on any additional sum.

Man in possession

5s. a day, to provide his own board in every case.

For Advertisements

The sum actually and necessarily paid.

Commission to Auctioneers

7½ per cent. on the sum realized not exceeding £100

5     "     on the next £200

3     "     on any sum exceeding £300 up to £1,000

Fractions of a pound to be in all cases reckoned £1.

Reasonable fees, charges and expenses (subject to rule 17) where the distress is withdrawn and no sale takes place and for negotiations between landlord and tenant respecting the distress.

For appraisement on tenant's written request, whether by one broker or more, 6d. in the £1 on the value as appraised, in addition to the amount of the stamp.

SCALE II.—*Where the sum demanded and due does not exceed £20.*

For levying distress 3s.

Man in possession

4s. 6d. a day, to provide his own board in every case.

For appraisement on tenant's written request whether by one broker or more

6d. in the £1 on the value as appraised in addition to the amount of the stamp.

For all expenses of advertisements, if any, 10s.

Catalogues, sale and commission and delivery

1s. in the £1 on the net produce of the sale.

For removal at tenant's request, the reasonable expenses (subject to rule 17) of such removal.

Rule 17 is as follows:—In case of any difference as to fees, charges and expenses between the parties or any of them, the fees, charges and expenses shall be taxed by the Registrar of the County Court of the district in which the distress is levied. The Registrar may make such order as he thinks fit as to the costs of such taxation. Where the rent distrained for exceeds £20, his fee for taxation is 10s., otherwise 5s.

outer door must be open at the time of entering to distrein, and is not to be broken open, for every man's house is his castle; but, if the outer door be open, the inner doors may be broken open if necessary.

The next thing to be done is to seize the property intended to be taken. If the rent due is tendered to the landlord or bailiff before any article is seized, the landlord cannot distrein or recover any expense which he may have incurred.\* It is a sufficient seizure if the distreinor handles one article, and says that he takes it in the name of all the goods on the land or in the house, or in the name of all the goods in a particular place, or of certain goods, naming them.

As soon as the seizure is made, the person distreining should make an inventory of the property distreined (see *Form xix*), and serve it, together with a notice of distress (see *the same form*), on the tenant either personally, or by leaving it at his place of abode, or, if there be no house on the premises, then by affixing it to the most conspicuous part of them. It is sometimes desirable to have a witness present so that he may testify to the regularity of the proceedings.

*What is to be Done with the Distress. The Sale.*

20. When the inventory has been drawn up, the party distreining may remove the goods off the premises to any convenient place of security,† of which the notice should be given to the tenant with the inventory. But a distress is now seldom removed from the premises; for, by the Statute 11 Geo. 2, c. 19, s. 10, it is enacted that the party distreining may impound or secure the distress whatever its nature, in such part of the premises as may be most fit and convenient. But this statute does not empower the landlord to interfere with the use by the tenant of any part of the premises, except that which is necessary for securing the distress. The articles taken should be secured in as few rooms or farm-buildings as will contain them, unless the owner gives his consent to their remaining where they are. This

\* I have known the landlord of a farm put to much trouble by his tenant, who always kept his rent in his pocket, but never paid it till the bailiff came. The tenant kept a sharp look-out for the bailiff, and paid the money the moment he set foot on the land.

† But cattle must not be taken out of the hundred, rape, wapentake or lathe in which they are taken, except to an open pound in the same shire, and not more than three miles from the place where they were taken.



consent may be sometimes required in writing. (*See Form xxii.*)

A person may be left in possession of the distress and he is entitled to such a portion of the premises as is necessary for himself. But the distreining is complete after the seizure and delivery of the inventory, though no man is left in possession, and the tenant cannot retake anything seized without being guilty of pound-breach, and liable to an indictment, and to an action for the treble value of the goods, and this, though the distreining may have been wrongful or irregular.

The landlord must not use or consume any animal taken as a distress, or its fruits; except that he may milk cows.

The landlord should carefully avoid two things, namely, distreining for more rent than is due, and, what is of far more importance, seizing property more than reasonably sufficient to cover the rent due.

The landlord must not keep the goods on the premises for more than five days after the delivery of the notice, without the tenant's consent. [*See Form xxii.*] But such consent will not justify the detention of the goods of a stranger. The five days must be reckoned exclusively of the day of taking, so that, if the taking is on the 1st day of a month, the sale (to be presently mentioned) must not take place till the 7th. This period of five days is to be extended to fifteen days if the tenant or owner makes a request in writing to the person distreining for such extension and also gives security for any additional cost thereby occasioned. But, at the request or consent in writing of the tenant or owner, the distreinor may sell the goods or part of them before the extended time expires.

21. If within that time the tenant does not pay the rent with the expenses of the levy, and if neither he nor the owner *replevy* the goods (*i. e.* procure them to be re-delivered to him on his giving security to the Registrar of the County Court to bring an action against the landlord and pay rent and costs if unsuccessful) the landlord may proceed to sell.\*

The landlord may sell without auction and (unless required in writing by the tenant or the *owner* of the goods) without appraisement or removal. If the tenant or the owner requires an appraisement, he must bear the expense of it according to the rates already given in a

\* But, before doing so, it will sometimes be prudent to search at the office of the Registrar of the County Court to see that the goods have not been replevied.



note, and so also if he requires a removal, and must also bear any damage which the removal occasions to the goods which he requires to be removed (*Law of Distress Amendment Act*, s. 5).

Three requests have been mentioned which must be conceded if made in writing by the tenant or the owner, namely, for extension of time to replevy, for appraisement and for removal; and one which need not be conceded, namely, to sell before the extended time which has been demanded. "The owner" of course means an owner who is not the tenant.

Where the owner is protected as a lodger or under the *Agricultural Holdings Act*, he will probably save his goods by the means already explained, which are open to persons so situated. Whatever demand the owner makes under the *Act of 1888* should be confined to the goods which he owns. The tenant, however, being responsible to the owner, may, I presume, make a demand in regard to all the goods seized.

22. If an appraisement is required by the tenant or the owner, or is made without being so required the landlord or the person distreining on his behalf must not act as one of the appraisers, or the distress will be irregular. The appraisers need not be professional appraisers, but they must be reasonably competent. They must value every article separately, and must then write the total value on the back of the inventory. [See *Form xxiii.*] The person distreining then signs a receipt on the inventory. The appraisement, *i. e.* the inventory, with the value written on the back, should be stamped, and given to the tenant on demand. As the amount of the duty varies with the amount of the valuation, the broker will usually have with him two or three stamped forms, on one of which he can write out the inventory from a rough copy. If these are not ready to hand, the appraisement can be stamped afterwards. [See "*Stamps.*"]

No appraiser need be sworn, as formerly, by the Sheriff, under-Sheriff or constable, and no oath is required of an appraiser at all. (*The Parish Constables Act*, 1872, s. 13.)

The landlord, as already stated, may sell without auction. If he employs an auctioneer, the auctioneer must be licensed, unless the distress is for a sum *under* £20, in which case the person selling need not be licensed. (8 and 9 Vict., c. 15, s. 5.)

## XVII. WARRANT TO DISTREIN.

To C. D., my bailiff,—

I authorize you to distrein the goods and chattels in and upon the dwelling-house and premises of E. F., No. 1, in street, in the parish of , in the county of , for £ , being [*two*] quarters' rent due for the same at Christmas Day last,\* and to recover the said rent according to law.

Dated this day of [*month and year*].

A. B.

## XVIII. ANOTHER FORM FOR A FARM.

To C. D., my bailiff,—

I authorize you to distrein the goods and chattels, and growing crops in and upon the dwelling-house, farm and lands, called Monk's Grange, in the occupation of E. F., in the county of , for £ , being two quarters' rent due for the same at Christmas Day last,\* and to recover the said rent according to law.

Dated this day of [*month and year*].

A. B.

## XIX. FORM OF SEIZING.

I seize this [*chair*] by way of seizing all the goods on the premises† for the sum of £ , rent due to A. B. on day last.”‡

## XX. INVENTORY AND NOTICE.

An inventory of the goods and chattels distreined by me, C. D.,§ this day of [*month and year*], in the dwelling-house|| and premises of E. F., situate ¶ for £ , being quarters' rent due to me\*\* at day last,†† and still unpaid.

## IN THE DWELLING-HOUSE.

*Front Parlour*.—Six horsehair chairs, etc.

*Front Kitchen*.—Two deal tables, etc.

\* Or state month and year when the last quarter's rent was due.

† If all the goods on the premises would evidently be too much say, “by way of seizing all the furniture in the house,” or “all the goods in this room,” or, in the case of a farm, “I seize this [*bullock*] by way of seizing all the cattle on the premises, etc.”

‡ Or state month and year when the last rent was due.

§ Or “C. D., as bailiff to A. B., and by his authority.”

|| Or “dwelling-house, farm and lands,” as the case may be.

¶ Describe the premises by number, street and town, with parish and county if necessary; or, in the case of a farm, by name and county, with parish if necessary.

\*\* Or, if by bailiff, “to the said A. B.”

Or state month and year when the last rent was due.

## THE STABLES AND COACH-HOUSE.

Two brown horses, harness and mail phaeton.

## IN THE PADDOCK.

Etc., etc.

To E. F.

Take notice that I have this       day of [*month and year*],  
distreined the goods and chattels\* aforesaid, on the premises,  
and for the rent aforesaid, and have impounded them on the  
premises,† and that, unless you pay the said rent, with the  
charges of distress, within five days from the date hereof, the  
said goods and chattels will be sold according to law.

Dated the       day of [*month and year*].

C. D.

XXI. NOTICE TO BE SUBSTITUTED FOR THE ABOVE WHERE  
GROWING CROPS ARE TAKEN.‡

To E. F.

Take notice that I have this       day of [*month and year*],  
distreined the goods, chattels, and growing crops aforesaid, on  
the premises and for the rent aforesaid, and have impounded  
the same on the premises aforesaid,§ and that unless you pay  
the said rent, with the charges of distress, within five days  
from the date hereof, the said goods and chattels will be sold  
according to law, and if they are insufficient, I shall proceed to  
cut, gather, lay up on the premises and prepare for sale the  
said crops, when ripe, in convenient time to sell the same, or a  
sufficient part thereof, so satisfy the said rent and charges,  
together with the charges of sale, according to the statute in  
such case provided.

Dated the       day of [*month and year*].

C. D.

\* Cattle are, of course, included under the word "chattels," a word which was originally applied to cattle only.

† If the goods and chattels are removed, leave out the words "impounded them on the premises" and say "removed to," and describe the place to which the goods are removed with sufficient accuracy.

‡ This notice is to be appended to the inventory, instead of the above Form wherever growing crops are taken. It may be used whether the crops are the only things taken, or not. The crops will, of course, be put into the inventory, and should be described according to the field in which they grow.

§ Growing crops will, of course, remain where they are till they are ripe. If the other things seized are removed, state to what place. As to cattle [see *ante*].

## XXII. TENANT'S CONSENT TO LANDLORD CONTINUING IN POSSESSION BEYOND FIVE DAYS.

To A. B.\*

I desire you to keep possession of the goods and chattels which on the       day of [*month and year*]<sup>†</sup> you distreined for rent due from me to you in the places where they are now lying, from the space of       days from the date hereof, on your undertaking to delay the sale for that time to enable me to defray the rent and charges, and I will pay the man for keeping possession.

Dated the       day of [*month and year*].

E. F.

## XXIII. ‡THE APPRAISEMENT.

We, the above-named G. H. and J. K., being duly sworn on the Holy Evangelists by L. M., constable, above-named, well and truly to appraise the goods and chattels mentioned in this inventory according to the best of our ability, and having viewed the said goods and chattels, do appraise and value the same at the sum of £       .

As Witness our hands this       day of [*month and year*].

G. H.

J. K.

## XXIV. DECLARATION BY LODGER WHOSE GOODS ARE DISTREINED.

I, the undersigned A. B., declare as follows:

1. I am a lodger in the house of C. D., of No. 1, Star Chamber Alley, Westminster, where I occupy the two rooms on the first floor at the rent of 15s. a week, due every Tuesday.

2. I have paid the said C. D. my rent to Tuesday, the 9th day of August instant, and the only rent which I owe him is 15s. due last Tuesday, the 16th instant, which I now tender to the bailiff who has distreined for rent due by the said C. D.

3. The said C. D. has no right of property or beneficial interest in any of the chattels in the said two rooms, or the iron lathe and the tools used therewith in the outhouse, which chattels, lathe, and tools are described in the following

### INVENTORY.

Iron bedstead, mattress, bed and bedding.

Chest of drawers.

Four cane-bottomed chairs, etc.

Iron lathe and tools, namely, etc.

Dated the 18th day of August, 18—.

A. B.

\* Landlord's name.

† Day of seizing.

‡ This may be written on the back of the inventory.

## XXV. REQUIREMENT BY TENANT OF APPRAISEMENT.

To A. B., esquire [landlord], and C. D., his bailiff.

I require you to cause the goods and chattels [and growing crops] distreined by you for rent on the premises occupied by me, to be appraised in accordance with the Statute 2 William and Mary, cap. 5.

Dated this            day of [*month and year*].

E. F. [*tenant*].

## XXVI. THE LIKE BY OWNER.

To A. B., esquire [*landlord*], and C. D., his bailiff.

I require the following goods and chattels belonging to me and distreined by you for rent on the premises occupied by E. F. to be appraised in accordance with the Statute 2 William and Mary, cap. 5, namely :

Brown mare *Severn*.

Saddle, bridle and bit.

Dated the            day of [*month and year*].

G. H. [*owner*].

## XXVII. REQUEST BY TENANT FOR REMOVAL OF DISTRESS FOR THE PURPOSE OF SALE.

To A. B., esquire [*landlord*], and C. D., his bailiff.

I request you to remove the goods and chattels distreined by you on the premises occupied by me to the sale-rooms of Mr. X, auctioneer, of Newtown and to have them sold there.

Dated the            day of [*month and year*].

E. F. [*tenant*].

## XXVIII. THE LIKE BY OWNER.

To A. B., esquire [*landlord*], and C. D., his bailiff.

I request you to remove the following goods and chattels belonging to me and distreined by you on the premises occupied by E. F. to the sale yards of Mr. J. S. at Kingsbridge, and have them sold there, namely :

Brown mare *Severn*, etc.

Dated this            day of [*month and year*].

G. H. [*owner*].

## XXIX. REQUEST BY TENANT FOR EXTENSION OF TIME TO REPLEVY.

To A. B., esquire [*landlord*], and C. D., his bailiff.

I request that the period of five days allowed by the Statute 2 William and Mary, cap. 5, to replevy the goods and chattels [and growing crops], which you have distreined for rent on

the premises occupied by me, be extended to \*days from the date of your distress, and I enclose the †guaranty of J. S., of , for any additional cost that may be occasioned by such extension.

Dated this            day of [*month and year*].

E. F. [*tenant*].

### XXX. THE LIKE BY OWNER.

[*Follow the above form down to "goods and chattels," and proceed*] belonging to me, namely :

Brown mare *Severn*, etc.

which you have distrained for rent on the premises occupied by E. F., be extended [*follow the above form to the end*].

G. H. [*owner*].

### XXXI. REQUEST BY TENANT FOR SALE BEFORE THE EXTENDED TIME.

To A. B., esquire [*landlord*], and C. D., his bailiff.

I request you to sell on the            day of [*month and year*], or as soon as convenient before the time to which the day for replevying has been extended, the goods and chattels [and growing crops] which you have distrained for rent on the premises occupied by me.

Dated the            day of [*month and year*].

E. F. [*tenant*].

### XXXII. THE LIKE BY OWNER.

To A. B., esquire [*landlord*], and C. D., his bailiff.

I request you to sell on the            day of [*month and year*], or as soon as convenient before the day to which the time for replevying has been extended, the following goods and chattels, belonging to me, which you have distrained for rent on the premises occupied by E. F., namely :

Brown mare *Severn*, etc.

Dated the            day of [*month and year*].

G. H. [*owner*].

### NOTICE TO QUIT.

23. No notice to quit is necessary where the premises are let for a term certain expiring on a fixed day. But such a notice is necessary in the case of a tenancy from year to year, or other tenancies of the like nature, as from quarter to quarter or from month to month.

Where the tenant holds from year to year and there has been no special agreement with regard to notice, the tenancy can be ended by a notice given by either land-

\* Name number of days not exceeding fifteen days from the distress.

† Or whatever the security is.

lord or tenant half a year before the expiration of the current year of the tenancy. Where the tenancy begins on one of the usual quarter-days, the notice will be sufficient if given on or before the second quarter-day before the one at which the current year of the tenancy ends, which is *half a year's* interval, whether more or less than six calendar months. The notice may be given so as to terminate at the end of the first as well as any subsequent year, unless the tenancy is for a year certain and thenceforth or "so on" from year to year; in which case the notice must terminate at the end of a subsequent year.

24. But if the tenement holden is one to which the Agricultural Holdings Act, 1883, applies, as defined by sec. 54 of that Act (see *ante*, note under the head "Distress," Class vi, s. 9), where by law, under the terms of the contract of tenancy, half a year's notice expiring with a year of tenancy is required, then a year's notice so expiring shall be necessary\* unless the landlord and tenant by writing under their hands† agree that sec. 33 of the Act shall not apply, in which case half a year's notice is to continue to be sufficient. (*Agric. Hold. Act*, 1883, s. 33.)

25. Where a yearly tenant does not enter at the beginning of a customary quarter, and pays rent quarterly, or half-yearly, counting from the day on which he entered, the notice (whether of half a year or a whole year) must end on the anniversary of the day on which the tenancy commenced. But when, after coming in between two customary quarter-days, and paying rent to the end of the first quarter, the tenant pays his rent afterwards on the customary quarter-days, the notice should end on the anniversary of the first quarter-day after which he entered.‡

26. Where a yearly tenancy arises under an agreement which merely provides that the tenancy may end on a quarter's notice, this means a quarter's notice ending with the anniversary of the day on which the

\* Where the contract of tenancy bore "until six months' notice shall have been given, etc.," it was held that six months was not the same as half a year, and that the contract of tenancy did not fall within the Act. "Half a year" means the space from one quarter-day to the next but one, whether more or less than six months. (*Barlow v. Leal*, 15 Q. B. D., 501, C. A.)

† There must be a writing under the hand of both; but, if the landlord signs the contract of tenancy and the tenant the counterpart, that will be enough.

‡ The section says that it is not to apply where the tenant is bankrupt or petitions for a composition or arrangement.

tenancy commenced. But it is otherwise if the agreement is for a quarter's notice "at any time," or that the tenant "shall always quit" on a quarter's notice. Whether the agreement is in writing matters not. Where a servant is allowed the occupation of a house or part of a house, as a remuneration for his services in lieu of wages, or as part of his wages, he must quit the house when he quits his service, for no tenancy has arisen; but if an independent arrangement is made by which a tenancy is created, a notice must be given according to the nature of the tenancy.

In the case of a monthly or weekly letting, which is common with regard to apartments, it is doubtful whether the law requires any notice in the absence of a contract or usage; but it will always be safe to give a month's or a week's notice, as the case may be.

27. Sometimes a landlord or tenant may not know at what time the tenancy began. In this case, if the tenancy is a yearly one, and not within the Agricultural Holdings Act, 1883 (see note Class vi, s. 9), the notice should be to quit "at the      day of [*month and year*], or at the end of the year of the tenancy which will end next after half a year from the service of this notice, whichever shall last happen.

If the tenement is of the sort affected by the Act, the notice should be to quit on a day named, a year or more from the date of the notice, "or at the end of the year of the tenancy which shall end next after a year from the service of this notice, whichever shall last happen."

If the tenant does not go out on the day named the landlord will, in the first case, wait a year, and, in the second case, wait two years from that day before bringing an action of ejectment.

So, if the tenancy is a weekly one and the day on which it commenced is uncertain, the notice may be to quit "on the      day of      or other the determination of your week of tenancy which shall end next after a week from the service of this notice, whichever shall last happen."

But if the landlord asks the tenant when his tenancy commenced, the latter will be bound by his answer, and the notice to quit may be given accordingly.

28. It is not necessary that a notice should be in writing, unless the parties have agreed that writing should be used; but it would be imprudent in any case to neglect so simple a mode of fixing both the terms and the fact of the notice. Neither is it necessary that the notice should describe the premises with complete accu-



racy; but it must describe them so as not to allow of any doubt on the tenant's mind.\* The notice must be peremptory, and not in the alternative, as by telling the tenant that he must quit or else pay an increased rent.†

The notice must be *addressed* to the tenant himself. It may either be delivered to him personally, or to his wife or servant, at his house, whether or not the house is the tenement to which the notice applies. But, if the notice be delivered to a wife or servant, that person should be expressly told that it is a notice to quit, and that it must be delivered to the tenant. The courts will then assume that the notice has reached the tenant. But, to whomever it is delivered, it will be sufficient if it can be shown to have reached the tenant's hands.

29. The person who serves the notice should have a duplicate, and should then, or soon afterwards, write on the back of the duplicate the time and mode of service. If the tenant does not quit according to the notice, and the landlord afterwards *distreins* for rent accruing due after the expiration of the notice, the latter will be considered as having absolutely waived his notice. The landlord will also usually be considered as waiving his notice by giving a new one, or by *accepting* rent accruing due after the notice has expired; though if he declare at the time of taking the rent that he does not mean to waive his notice, or if some deception is practised upon him, the acceptance of rent will not be a waiver. If the tenant has given notice, he is usually held to have

\* Where the tenant holds only one tenement of his landlord or holds several by tenancies commencing at the same time of year, and is to be turned out of all that he holds, nothing can be better than to give him notice to "quit every tenement which you hold of me." "Tenement" includes land, as well as buildings, being a general name for every thing holden.

† The notice, however, will not be bad if it merely points out that a payment of double the yearly value will be the penalty if the tenant holds over after demand made and notice in writing given for delivering possession (notice to quit), for such is the law by Statute 4 Geo. 2, c. 28, s. 1 (see Form xl). This penalty is popularly called double rent, but the words of the Statute are "*at the rate of* double the yearly value of the lands," which is payable for so long as the tenant holds over, though he goes out before a rent day comes round. This double value will usually be measured by the rent, but, if the rent is very low the double value may largely exceed it. The Statute applies to tenants for life, lives or years; which includes tenants from year to year, but not those who hold from week to week or from three months to three months. What is properly called the penalty of "double rent" is that which is imposed by Statute 11 Geo. 2, c. 19, s. 18, upon all tenants, for whatever term they hold, who, after *themselves* giving notice to quit, do not deliver up possession.

waived it by holding over. A notice given by one of several partners on behalf of himself and the others, or by an agent of the partners on behalf of them all, will be good; but, if not given by an agent, it had better be signed by each partner.

30. A person who is merely agent for the landlord, to collect his rent, has not thereby any authority to give a notice to quit; but, if he is employed in the general management of the property, a notice to quit given by him will be good. Whenever a notice to quit is given by an agent on behalf of the landlord, the agent must have the authority *at the time* of giving notice. A subsequent ratification by the landlord will not make the notice good.

## FORMS OF NOTICES TO QUIT

### XXXIII. NOTICE TO QUIT FROM LANDLORD TO YEARLY TENANT.

To C. D.

I give you notice to deliver up possession of the messuage and premises which you hold of me,\* situate No. , in street, in the City of London, on the day of [*month and year*]. Dated the †day of [*month and year*].

A. B.

### XXXIV. ‡ANOTHER FORM.

To C. D.

I give you notice to deliver up possession of every tenement which you hold of me on the day of [*month and year*]. Dated the day of [*month and year*].

A. B.

### XXXV. NOTICE TO QUIT BY AGENT OF LANDLORD TO YEARLY TENANT.

To C. D.

As agent for, and on behalf of, your landlord, A. B., I give you notice to deliver up possession to him or his assigns of the messuage and premises which you hold of him, situate No.

\* Or “~~knew~~as Monk’s Grange, in the county of Oxford,” as the case may be.

† The date will, of course, be the day on which the notice is signed.

‡ This may be used where it is difficult to describe the premises, or the landlord wishes the tenant to quit several tenements; but in the latter case the day named should not be too early for *any one* of the tenements.

in            street, in the county of Middlesex, on the            day of  
[*month and year*]. Dated the            day of [*month and year*].  
E. F.

XXXVI. NOTICE TO QUIT BY LANDLORD TO YEARLY TENANT  
OF A FARM, WHERE THE COMMENCEMENT OF THE TENANCY  
IS UNCERTAIN.

To C. D.

I give you notice to quit and deliver up possession of the  
farm and premises which you hold of me, called Monk's Grange,  
in the county of Oxford, on the            day of [*month and year*],  
or other the expiration of the year of your tenancy which shall  
expire next after the end of one year\* from the time of your  
being served with this notice. Dated the            day of [*month*  
*and year*].

A. B.

XXXVII. NOTICE TO QUIT BY TENANT OF A FARM TO  
LANDLORD.

To A. B.

I give you notice that I shall deliver up possession of the  
farm and premises which I hold of you, called Monk's Grange,  
in the county of Oxford, on the            † day of [*month and year*].  
[*Dated*] the            day of [*month and year*].

C. D.

†XXXVIII. NOTICE BY TENANT TO LANDLORD TO QUIT  
APARTMENTS.

To A. B.

I give you notice that I intend to deliver up possession of  
the apartments§ which I hold of you at No.            , in  
street, in the town of            , on the            day of [*month and*  
*year*]. Dated the            day of [*month and year*].

C. D.

\* The premises, being a farm, will come under the Agricultural  
Holdings Act, 1883 (see note *ante*, under head "Distress," Class vi,  
s. 9), and the notice must be a year's notice if the contract of  
tenancy is silent as to notice or provides for "half a year." If  
it provides for different periods, as "six months" or "three  
months" or a "quarter"—the two latter being very unusual—or  
excludes s. 33 of the Act, alter the form accordingly.

† A year's notice usually, but see last preceding note.

‡ From the previous forms it will be easy to frame notices  
applicable to apartments where the commencement of the tenancy  
is uncertain, and where the notice is given by or to the landlord or  
his agent.

§ Or "furnished house."

XXXIX. NOTICE TO QUIT BY OCCUPIER WHO DOES NOT  
ADMIT TENANCY.

To A. B.

I give you notice that on the            day of [*month and year*]  
I shall quit and deliver up possession of the tenement called  
Monk's Grange, in the county of Oxford, which you claim (but  
I do not admit) that I hold as tenant to you.

Dated the            day of [*month and year*].

C. D.

XL. NOTICE TO QUIT BY LANDLORD, WITH NOTICE THAT  
DOUBLE VALUE WILL BE DEMANDED FOR HOLDING OVER.

[*Follow Form xxxiii down to the word "dated," and proceed  
thus :—*]

And I also give you notice that, if you do not comply with  
this notice, I shall claim from you double the yearly value of the  
premises for so long as you shall keep possession of them after  
the expiration of this notice, according to the Statute in that  
case provided. Dated this    day of [*month and year*].

A. B.

XLI. \*NOTICE CLAIMING DOUBLE RENT FOR HOLDING OVER  
IN SPITE OF A FORMER NOTICE.

To C. D.

I give you notice that if you do not deliver up possession of  
the house and premises situate No.    , in    street, in the  
City of London, on the† day of [*month and year*], ac-  
cording to my notice to quit, dated the    day of [*month  
and year*], I shall claim from you double the yearly value of  
the premises for so long as you shall keep possession of them  
after the expiration of the said notice, according to the Statute  
in that case provided. Dated the    day of [*month and year*].

XLII. †LANDLORD'S INDEMNITY TO TENANT AGAINST  
ARREARS OF RENT, RATES AND TAXES.

To C. D.

In consideration of your becoming tenant of my premises,  
No.    , in    street, I agree to indemnify you against  
the payment of any rent,§ taxes or rates chargeable upon the  
said premises, or upon any person in respect of the occupation

\* This form is to be used where the landlord, after sending a  
notice to quit, has reason to expect that his tenant will hold over.

† Same day as in previous notice to quit.

‡ 6d. Stamp.

§ If the landlord himself holds under a lease, "rent" should  
always be inserted.

thereof, down to the commencement of your tenancy. Dated the       day of [*month and year*].

A. B.

### 3. WHERE A TENANT IS BANKRUPT, OR HIS GOODS ARE SEIZED IN EXECUTION.

31. Where a tenant becomes bankrupt, the landlord, either before or after the bankruptcy, may distrein and sell. But, as regards rent accrued due before the order of adjudication, such distress if levied after the adjudication can only avail for half a year's rent. If any more was then due, the landlord can prove for the overplus as a debt, and take his dividend on it along with the other creditors. (*Bankr. Act*, 1883, s. 42 and *Bankr. Act*, 1890, s. 28.)\* Distress is the only way in which the landlord can enforce his right. He can distrein at any time before the removal of the goods, and whether the messenger of the court is in possession or not.

Where the goods of the tenant being on the premises let are taken in execution by the Sheriff under a judgment of one of the superior courts, the landlord should give notice to the Sheriff, or to his officer concerned in the levy. When this is done, the Sheriff is forbidden (8 Anne, c. 14, s. 1) to remove the goods until the party on whose behalf the execution is issued has paid the landlord the rent due, not exceeding one year's rent. The notice is available though given after removal, or even after sale, as long as the proceeds have not been actually paid over to the execution creditor.

If the execution creditor pays the money, the Sheriff repays him out of the proceeds of the sale. If the execution creditor does not pay, the Sheriff is not bound to do so, and, in that case, the landlord may distrein as long as the goods are on the premises. If the goods are removed after the notice and before the rent is paid, an action lies against the Sheriff.

### XLIII. NOTICE OF RENT BEING DUE TO BE GIVEN TO SHERIFF IN POSSESSION OF GOODS OF TENANT UNDER AN EXECUTION.

To A. B., Esquire, Sheriff of the county of       , and to Mr.       , his officer, and all others whom it may concern.

Take notice that the sum of £       , for [*one year's*] rent of the premises situate at No.       , in       street, is now due

\* The words used, "order of adjudication," are made to include an order for the administration of the estate of a debtor whose debts do not exceed £50, or of a deceased person who dies intestate.

to me from my tenant C. D., of whose goods you are in possession upon the said premises, by virtue of a writ of execution, and that now I claim the said sum of £ , as due to me for and on account of the said rent.

As Witness my hand, this            day of [*month and year*].  
E. F., landlord of the said premises.

Where the goods of the tenant being on the premises let are taken in execution under the warrant of a County Court, the landlord may claim the rent within five clear days after the taking or at any time before the removal of the goods, by delivering to the bailiff or officer making the levy a writing signed by himself or his agent, stating the amount of rent claimed to be in arrear, and the time for and in respect of which such rent is due. *The bailiff is then to distrein* for such rent and costs of distress, and is not to sell within five days after the taking of the distress any goods which are not perishable, unless at the request in writing of the owner. The bailiff is then to sell and pay to the landlord not exceeding four weeks' rent where the tenement is let by the week, nor more than the rent for two terms of payment where the tenement is let for a term less than a year, nor, in any case, more than a year's rent. (*County Courts Act, 1888, s. 160.*) The execution is not to be satisfied till the landlord is paid. The following is a notice pursuant to the Act:—

XLIV. NOTICE OF RENT BEING DUE TO BE GIVEN TO  
BAILIFF OF COUNTY COURT IN POSSESSION OF GOODS  
OF TENANT.

To the High Bailiff of the County Court of           , at  
and to his bailiffs making the levy hereinafter mentioned.

Whereas I have been informed that you have taken the goods of C. D., in the house occupied by him at           , under and by virtue of a warrant of execution issued by the said County Court of           , at           , now I hereby give you notice that the said C. D. holds the said house, with the appurtenances, as tenant to me,\* from year to year, from the            day of            and year], at the yearly rent of £           , payable quarterly, and that there is now due to me and unpaid of such rent the sum of £           , for [two] quarters, namely, for those respectively on the            day of [*month and year*], and the day of [*month and year*], and I now claim the said sum of  
A. B., landlord of the said premises.

32. When the owners of the land are joint-

\* Or as the case may be

† I have hitherto used the word "tenant" in its popular sense, as meaning a man who pays rent for his land. But I must here

and they let it jointly—the only way in which they can let it—one may give notice to quit on behalf of himself and the others.

XLV. NOTICE TO QUIT BY LANDLORD WHO IS JOINT-TENANT.

To E. F.

On behalf of myself and C. D. I give you notice to quit and deliver up possession of the tenement which you hold of us, called the Abbey Farm, &c. [*follow landlord's form of notice to quit to yearly tenant*].

A. B.

63. Where tenants in common\* have joined in letting land, as they often do, one may give notice to quit for both, just as if they were joint-tenants. But when they have not joined in letting, as when they have both, or one of them has, become entitled after the lease was granted or the yearly tenancy commenced, they can either all join in a notice to quit or any one of them can give notice to quit his own undivided share.

XLVI. NOTICE TO QUIT BY LANDLORDS WHO ARE TENANTS IN COMMON AND HAVE JOINED IN LETTING.

[*Follow the last preceding form, or both may give the notice and both sign.*]

use the word in its strict legal sense, which includes the landlord. Those who have the largest estates or interests in land, like some who have the smallest, are called “tenants” or holders, because they hold of some lord, who is, in most cases, the sovereign. Thus persons who have estates of inheritance in the land are called “tenants-in-fee,” “tenants-in-tail,” etc., as the case may be.

Roughly speaking, two or more persons are said to be joint tenants of land where they hold it in undivided shares by the same title commencing at the same time. They may have estates of inheritance or for life or lives in this way. “To A and B, their joint heirs and assigns for ever” are words which will give them a joint estate in fee-simple. The chief peculiarity is that the share of one who dies goes to the survivor or survivors; for which reason

\* Estates are always made joint-tenants.

Tenants in common are those who hold lands in undivided shares, not by a joint title but by several titles. If you give lands to two, “to hold the one moiety to the one and his heirs and the other moiety to the other and his heirs,” they are tenants in common, and there is no survivorship, but the share of each will go to the person to whom he devises it or, if the owner dies intestate, to his heir. The person so taking will be tenant in common with the survivor. Thus tenants in common, unlike joint tenants, may acquire their interests not only without unity of title but at different times.

XLVII. THE LIKE WHERE THEY HAVE NOT JOINED IN  
LETTING.

To E. F.

We give you notice to quit and deliver up possession of the tenement which you hold of us called, etc., on the            day of [month and year], etc. [*follow notice by landlord to yearly tenant*].

A. B.

C. D.

XLVIII. NOTICE TO QUIT BY ONE LANDLORD, BEING TENANT  
IN COMMON, OWNING A THIRD SHARE.

To C. D.

I give you notice of my intention to determine the tenancy under which you now hold of me one undivided third part or share of and in the farm called Earl's Croft, and I require you to quit the same on the            day of [month and year], or at the expiration of the year of your tenancy which shall expire next after the end of [one year] from the service of this notice. Dated the            day of [month and year].

A. B.

34. The statute 1 and 2 Vict., c. 74 enacts that, where a tenement has been held at will, or for a time not exceeding seven years, *without any rent* or at a rent not exceeding £20 a year, and the tenancy has been determined by a legal notice to quit *or otherwise*, and the tenant or person in occupation neglects or refuses to deliver up possession, the landlord or his agent may cause the person so neglecting or refusing to be served with a notice of intention to apply to the justices, on a day and at a place named, for a warrant to give possession.

The warrant when obtained only puts the landlord in possession and is by no means conclusive as to his title. So far from it, if the tenant or occupier brings an action of trespass (as he may do on giving security), and proves that the landlord had no right to enter, the entry under the warrant will be regarded as a trespass and the plaintiff will recover damages. And, if there has been only an irregularity in the proceedings for obtaining possession, the landlord may be sued in another form of action for special damage, although he had a good right to possession.

I do not recommend anyone to proceed under this statute without the advice not only of a lawyer but of a local lawyer. The forms of the complaint and of the



warrant will be found in the Schedule to the Act. The following is the form of the

XLIX. NOTICE OF OWNER'S INTENTION TO APPLY TO JUSTICES TO RECOVER POSSESSION.

I, A. B., owner [*or agent to E. F., the owner*], do hereby give you notice that unless peaceable possession of the tenement called Butcher's Paddock, situate in the parish of Minsham, and abutting towards the South-East on Church Lane, which was held of me [*or of the said E. F.*] under a tenancy from year to year \* [*or as the case may be*], which was determined by notice to quit from me† [*or from the said E. F.*] on the day of [*month and year*], and which tenement is now held over and detained from me [*or from the said E. F.*], be given to me on or before the expiration of seven clear days from the service of this notice, I shall [*or the said E. F. will*], on the day of [*month*], 18—, at o'clock of the same day,‡ at the Town Hall,§ Minsham, apply to Her Majesty's Justices of the Peace acting for the [district] of [*state the district, division or place in which the tenement or any part thereof is situate*], in Petty Sessions assembled, to issue their warrant directing the constables of the said district to enter and take possession of the said tenement, and to eject any person therefrom.

Dated this day of [*month and year*].

A. B.

To Mr.

\* If the tenancy was at will, say so. If it was under a lease for not more than seven years or under a contract of tenancy made by the owner who gives the notice, say "under a lease [*or contract of tenancy*] made by me and dated, etc., which expired on the day of etc." If the tenancy was created by some person whose rights are vested in the present owner by inheritance, devise or assignment, express this.

† If the notice to quit was given by a preceding owner or his agent, alter the form accordingly.

‡ It will be well to add here "or so soon thereafter as I can be heard."

§ Be careful to state the place where the Petty Sessions will be held on that day.

|| The notice should be addressed to the person whose tenancy has ended, if he is in occupation of the premises, and if not, to the occupier who "neglects or refuses" to give up possession. As to service, sec. 2 of the Act says that the notice "may be served either personally or by leaving the same with some person being in, and *apparently residing at*, the place of abode of the person so holding over." "*Apparently residing*" means more than being in charge; it means *apparently living at the place*. The person serving the notice must read it over and explain its purport and intent to the person with whom it is left. If the place of abode of the person holding over cannot be found, or admission to it cannot be obtained,

the notice may be served by posting it up on a conspicuous part of the premises.

There may be no house on the premises, or if there is, it may not be occupied or, if it is, the occupier may not be the person whose tenancy is ended. The latter may have left long ago, and the occupier may be one to whom he has let, or may be a stranger. At all events, you must find the abode of the man who "neglects or refuses" or shew that it cannot be found or cannot be entered. Only in the latter cases can the notice be served by posting it on the premises. If the server finds a person with whom he can leave the notice, it is not always easy to make him wait while it is read over and explained.

## CLASS VII.—ARBITRATION.

*The Nature of Arbitration and How and by Whom it may be entered into.*

1. Arbitration, as treated of here, is where the parties consent to leave the disputes between them to be decided by a judge or judges of their own choosing.\*

2. Before dealing with this, I ought to state that sometimes the Courts make themselves the instruments for giving effect to such consent and sometimes order a reference to arbitration independently of consent.

By the Arbitration Act, 1889, s. 13, the High Court, or one of its judges, has power, in cases where a trial by jury is not a matter of right, to order any question arising in a civil cause or matter to be referred for inquiry or report to an official referee, who is an officer of the Court, or to a special referee named by the parties. The report of the person so appointed may be wholly or partially adopted by the Court and, as far as adopted, can be enforced as a judgment or order.

And, in *any* civil cause or matter, the judge may order the whole of it or any question of fact arising in it “to be tried before a special referee or arbitrator respectively agreed on by the parties, or before an official referee or officer of the Court,”

“if all the parties interested who are not under disability consent; or

“if the cause or matter requires any prolonged examination of documents or a scientific or local investigation,” and is, therefore, inconvenient for trial in the ordinary way; or

“if the question in dispute consists wholly or in part of matters of account” (*Arb. Act*, s. 14).

The official or special referee to whom the case is re-

\* Much that is here said will apply to all arbitrations; but I do not propose specially to treat of references, whether voluntary or compulsory, under Acts relating to railways, canals, tramways, telegraphs, waterworks, Crown lands, town improvements, etc., and whether under the special Act or a general Act, such as the “Lands Clauses.”

ferred under s. 13 and the special referee or arbitrator to whom the case is referred under s. 14 are to have the powers of the Court in the conduct of the reference, and their awards or reports, unless set aside by the Court,\* are to be equivalent to a verdict. See *Arb. Act*, s. 15, and O. 36, r. 49.

3. By statute 12 and 13 Vict. c. 45, s. 12, all orders, rates and other matters in respect of which notice of appeal to the general or quarter sessions of the peace shall be given and for which the remedy is by such appeal (not being a summary prosecution or order of bastardy or any proceeding relating to the excise, customs, stamps, taxes or post-office) may be referred to arbitration by the parties or their attorneys by obtaining an order of a judge of the Queen's Bench Division. They may agree to the arbitration or umpirage of any person or persons. By s. 13 the court of general or quarter sessions may, on the like consent, make a like order for a reference "to such person or persons and in such manner and on such terms as the said court shall think reasonable and proper." In either case the award is to be final and to stand in place of the judgment on the appeal.

4. By the County Courts Act, 1888, s. 104, the County Court Judge may, *with the consent* of the parties, refer an action (with or without any other matters within the jurisdiction of the Court, if in dispute between the parties) to arbitration. He may refer the matter to such person or persons and on such terms as he may think fit, and the parties cannot revoke the submission. The award is to be entered as the judgment in the action. But at the first court held within a week after the entry of the award, the judge may, on application, set aside the award or, by consent, revoke the reference and order another.

But our business being chiefly with voluntary arbitrations, it will be unnecessary to speak further of references by the order of a Court or Judge.

5. The parties to a dispute, whether an action has been begun or not, can always refer the dispute to arbitration. If an action is begun, they may get a judge's order to refer it and the other matters; but this will be unnecessary because, by s. 1 of the Arbitration

\* If the order of reference includes other matters besides the action, it derives its validity from the consent of the parties and not from the Act, and the arbitrator is not a special or official referee, and the Court cannot review his decision. *Darlington etc. Co. v. Harding*, 1891, 1 Q. B. D. 245.

Act, a voluntary submission, unless the contrary is expressed, is equivalent to an order of Court.

An arbitration clause is often inserted in agreements, especially in agreements for partnership, agency, works or services. This clause may be worded in two ways; one merely saying that all disputes under the agreement are to be submitted to arbitration, and the other that the party who breaks the agreement shall pay compensation to be assessed by arbitration. In either case it makes no difference whether an arbitrator is named or not.

6. In the latter case no liability arises until the arbitration has taken place; in the former, the Courts will usually stay any proceedings until an arbitration has been had, provided the party sued is willing to refer and the demand is not trifling or the arbitration insisted on in order to put the plaintiff to delay and expense. This power, formerly conferred on the Court by the Common Law Procedure Act, 1854, is now given to the High Court by sec. 4 of the Arbitration Act.\*

7. All disputes which relate to civil rights and obligations, whether they are the subject of legal proceedings or not, may be submitted to arbitration.

The matters in dispute between any number of persons may be referred at the same time.

Each executor may refer to arbitration disputes concerning the personal estate of the testator, and trustees acting jointly may refer matters concerning the trust estate unless the instrument creating the trust expresses a contrary intention.<sup>4</sup> (See xi, 31.)

But an infant cannot unless as an agent submit matters to arbitration, except by the leave of the Court of Chancery in a suit to which he is a party; nor can a married woman, except with regard to her separate property settled to her sole and separate use, that is, of which she has the absolute disposal, or as an agent.

One person may bind another by referring a dispute

\* Sec. 4 enacts that, where an action is brought in any Court against a party to the submission or any one claiming through or under him in respect of the matter agreed to be referred, the person sued "may at any time after appearance and before delivering any pleading or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

for the latter in the latter's name, or for the latter and himself together, if authorised to do so. If he is not authorised, he will be bound, but the other will be loose.

One partner has no implied authority to bind his co-partner by a reference, and if he does so in his name and that of his partner, the one who makes the submission will alone be bound; but of course he may have express authority. Counsel have no authority to bind their clients by a reference, but such an authority would probably be presumed if the client were in court and did not openly object.

8. It is a common thing for a dispute to be referred to two arbitrators, one to be named by each party; the decision, in case they differ, being in the hands of an umpire to be selected by the arbitrators before entering on the reference. In these cases it often happens that each arbitrator acts as an agent or advocate for the party who appointed him; but this conduct is not judicial or legal, and will be ground for setting aside the award. Each arbitrator should watch as keenly over the interests of the party who did not appoint him as over those of the other, from whom his authority is derived.

9. Awards made in the lifetime of the parties are binding after their death, on their heirs, executors and administrators, in like manner as any other contract made by such parties would be. But the death of any of the parties to the reference before the award is made operates as a revocation of the arbitrator's authority, unless the instrument of reference contains a special provision binding the personal representatives to the performance of the award after the death of the party. (*See Form xiii, clause 5.*)

*The Submission and the Power of the Courts in respect of it.*

10. The Arbitration Act, 1889, now contains most of the statutory portion of the law with regard to arbitration.

For the purposes of the Act, a submission, which is the same thing as an agreement of reference, is defined by s. 27 as being "a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not," and, by s. 1, is to have "the same effect in all respects as if it had been made an order of Court."

The writing may be under hand only or may be a deed, *i. e.* under hand and seal, and may be that kind of deed called a bond (see Class ii) conditional for performing the award. Bonds, however, present difficulties in certain cases and are seldom used.

11. In preparing a submission, the first duty is to describe accurately the matters in dispute which are to be submitted. "All matters in difference between the parties" includes all that it is possible to include, whether already the subject of litigation or not.

These words will include all claims made by either party against the other or by any one against any other or others and whether made before or during the reference, provided they existed at the time of the reference. And this was held in a case where the submission recited one claim for a particular amount and did not mention another. The latter had arisen before the reference, but was claimed for the first time during the progress of the reference, and the arbitrator awarded in respect of it, and the court held that he was right in doing so.

If an action or proceeding is pending, "all matters in difference between the parties to the action," or "proceeding," will include not only the litigated questions but all other questions between those parties. But a reference of "all matters in difference *in* the cause," or "action," or "proceeding," will be a reference of the cause, action or proceeding only.

12. By sec. 2 of the Arbitration Act, a submission, unless a contrary intention is expressed therein, is to be deemed to include the following provisions (given in the first Schedule to the Act), so far as they were applicable to the reference under the submission. In what follows, these provisions are referred to as "the scheduled clauses."

#### SCHEDULED CLAUSES (ARBITRATION ACT, 1889).

*a.* If no other mode of reference is provided, the reference shall be to a single arbitrator.

*b.* If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

*c.* The arbitrators shall make their award in writing within three months\* after entering on the reference, or after having

\* "Month" means "calendar month." Interpretation Act, 1889, s. 3.

been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.

*d.* If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission or to the umpire a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

*e.* The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire, by any writing signed by him, may from time to time enlarge the time for making his award.

*f.* The parties to the reference and all persons claiming through them respectively shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings and documents within their possession or power respectively which may be required or called for, and do all other things which, during the proceedings on the reference, the arbitrators or umpire may require.

*g.* The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath or affirmation.

*h.* The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

*i.* The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax and settle the amount of costs to be so paid, or any part thereof, and may award costs to be paid as between solicitor and client.

All the clauses given above, except the first, apply to the reference to two or more arbitrators. But the clauses are to apply "so far as they are applicable to the reference," and, in statutes, the plural includes the singular; so they will all apply, with the necessary changes, to the case of a single arbitrator.

13. Before suggesting the alterations in and additions to these clauses which it may be wise in some circumstances to introduce, I will go on with the powers given by the Act to the court.

Section 4, giving power to stay litigation where there has been a submission, has already been quoted. Section 5 says:—



In any of the following cases—

(a) Where a submission provides that the reference shall be to a single arbitrator, and all parties do not, after differences have arisen, concur in the appointment of an arbitrator;

(b) If an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied and the parties do not supply the vacancy;

(c) Where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, and do not appoint him;

(d) Where an appointed umpire or third arbitrator refuses to act, or is incapable of acting or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy;

Any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire or third arbitrator.

If the appointment is not made within seven clear days after service of the notice, the party who gave it may apply to the court or a judge, who may make the appointment, and the person appointed will then have the same powers as if all the parties had consented to the appointment.\*

14. By section 6, where the submission provides for a reference to two, one to be appointed by each party, then, unless the submission expresses a contrary intention,—

If either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;

If, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent;

Provided that the court or a judge may set aside any appointment made in pursuance of this section.

15. By section 7, unless a contrary intention is expressed, the arbitrator or umpire may administer oaths or take affirmations; may state an award as to the whole

\* But if the submission is to three, one to be appointed by each party and the third by the two, and one of the parties refuses to appoint an arbitrator, the court cannot compel him to do so, either under the Act or otherwise. *Re Smith & Service*, 25 Q. B. D. 545.

or part thereof in the form of a special case for the opinion of the court,\* and may correct any “clerical mistake in the award arising from an accidental slip or omission.”

16. If a party to the reference wishes to compel the attendance of any person as a witness, the court or a judge may make an order for a *subpœna* requiring the witness to attend and give evidence, or for one requiring him also to produce documents, etc., and may order a witness in prison to be brought up on *habeas corpus*. See the Act, sec. 8, 18.

17. The court or a judge may from time to time enlarge the time for making the award, whether the time has expired or not, and may remit the matters referred or any of them to the reconsideration of the arbitrators or umpire, who must then make an award within three months unless otherwise ordered. Where an arbitrator or umpire has misconducted himself, the court may remove him and set aside his award, and in any case may set aside an award improperly obtained. (See the Act, ss. 9—11.) And, by s. 12, “an award on a submission may, by leave of the court or a judge, be enforced in the same manner as a judgment or order to the same effect.”

18. As regards costs, if nothing is said about them, the costs of each party in respect of the submission, reference and award will be borne by himself.

Where no litigation is on foot, or the parties have agreed to withdraw from litigation, the submission may provide that

The costs of the reference and award shall abide the result of the award,

the effect of which will be that if the award is in favour of one, for however little, the other will have to bear all the costs.

Sometimes the following clause is used:—

The costs of the reference and award shall be in the discretion of the arbitrators or umpire.

The clause given in the Schedule of the Act (*ante*), which will apply unless a contrary intention is expressed, contains these words and goes further, giving power to tax costs and also to award costs to be paid as between solicitor and client.

Sometimes, and in partnership matters frequently, it

\* This, by s. 19, the court may *direct* to be done as to any *question of law* arising during the reference.

is resolved at the outset that each shall bear his own costs, and the following clause is used :—

Each of the said parties shall bear and pay his own cost of attending the reference, and the costs of the award shall be borne and paid by the said parties in equal proportions.

Where a cause is referred, the usual terms are that

The costs of the cause shall abide the event of the award as to the cause, and the costs of the reference and award shall be in the discretion of the arbitrators.

Where other matters in difference besides the cause are referred, there may be added, after the words *reference and award*, the words “as to the said cause and matters in difference.”

A judge who tries a cause, or before whom it is tried, has sometimes occasion to exercise a power of certifying to a fact or opinion which has an effect upon costs ; such as that the action was brought to try a right other than the mere right to damages, or that the case was a proper one to be tried in the High Court. And it is usual, where a cause is referred, to give the arbitrators the like power for which the following clause will suffice :—

The arbitrators shall have the same power as to certifying and otherwise as a judge of the High Court has.

19. It is often necessary to give the arbitrators power not merely to adjudicate on the rights of the parties (as to say that A. is to pay B. so much, or that B. is entitled to the way across A.'s land), but to order anything to be done by either party. For instance, that A. shall discharge a bond of himself and B. and that B. shall thereupon repay him such a proportion ; that the parties shall execute mutual releases ; that, in substitution for the way in question, B. shall in future enjoy a way, set out in a map, over A.'s land with a right to repair it, or, in case of a nuisance by drainage or manufacture, the precise mode to be adopted in future so as to avoid the mischief. For this purpose the following words will usually suffice :—

The arbitrators or umpire shall be at liberty to order anything to be done or submitted to and any instrument to be signed or executed by both or either of the said parties, or by the personal representatives of a deceased party respecting the matters referred.

20. The general rule is that the death of a party before award made is a revocation of the authority of the arbitrator. But if there are several persons on one

side, each having a separate interest, the death of one does not revoke the submission as regards the rest. And there are other exceptions, but they rarely arise.

The Arbitration Act, section 9, says that a submission is to be irrevocable except by leave of the court or a judge, and the Schedule (already set out) of clauses which, unless negatived, are to be included in the submission requires those who claim through the parties respectively to submit to be examined (see clause *f*), and makes the award binding (see clause *h*) on persons claiming under the parties. But the Act does not expressly undo the rule of law that death is a revocation. In those cases, therefore, where it is desirable that the reference should continue notwithstanding the death of a party, it will be as well to provide so expressly, which may be done thus :—

This submission shall continue notwithstanding the death of any party thereto, and the award shall be as valid as if made in the lifetime of the party so dying, and his personal representatives shall be parties to the submission.

21. If there are two arbitrators and the submission is silent as to an umpire being appointed to act in case of difference, they will be empowered, by clause *b* of the scheduled clauses, to appoint an umpire at any time within the period during which they have power to make an award; but it is usually better for them to make the appointment before they begin to differ, and the submission may say :— •

Before entering on the business of the reference the arbitrators shall appoint an umpire to act in case of difference.

22. In very complicated disputes, or where the decision on one question may make a difference in the mode of proceeding as to another, or may even dispose of that other, it is desirable that, in case of difference on any question, the umpire should be called in to settle it; for which purpose the following may be inserted :—

In case the arbitrators shall not agree in determining any matter or matters submitted to them, such matter or matters shall, from time to time, be submitted to the umpire, whose decision shall be final.

Sometimes the following will be convenient :—

The arbitrators or umpire may cause the said [lands] to be measured and surveyed, and maps or plans to be made thereof, and may do such further acts and things with respect to the same as they or he may think desirable for the purposes of this

reference, and the costs, charges, and expenses so occasioned shall be borne and paid by the parties to the reference in equal shares [*or shall be in the discretion of the arbitrators or umpire*].

This clause can easily be altered to suit the circumstances, as where a valuation of stock is required instead of a map of lands.

23. At arbitrations, like as at trials, a great deal of time is occupied by the arbitrator taking down the evidence of the witnesses and the admissions, consents and objections of the parties. So, where the disputes are complicated and there are many witnesses and much detail, the following clause may tend more to accuracy of decision and the saving of time and expense than any of the others:—

The arbitrators or umpire may employ a short-hand writer to take down the evidence and other proceedings *verbatim*, and to make one or more transcripts of his notes in manuscript or type-writing from time to time for the use of the arbitrators or umpire, and the expense of such employment shall be borne and paid by the parties to the reference in equal shares [*or shall be in the discretion of the arbitrators or umpire*].

24. To save the time and expense which would result from the umpire hearing all the case over again, the following clause will be convenient, especially if the shorthand clause above given has been inserted:—

The umpire may act upon the evidence given before the arbitrators, and may make his award without receiving any fresh evidence or hearing any witnesses; provided that if either party request him to hear the witnesses or any of them, or tender any fresh evidence, the umpire shall hear such witnesses and receive such evidence.

25. If it is desired to give the arbitrator power to take evidence by affidavit or statutory declaration, subject to cross-examination if desired by the party against whom the document is tendered, the reader is referred to clause 9 in Form xiii and the note thereto.

#### *Proceedings before the Arbitrator.*

26. When the instrument of reference has been signed and the arbitrator has been informed of it, one of the parties should apply to him for a written appointment of a time and place for the hearing, and should then make a copy of it and serve the copy on the other party, showing him the original.

27. If any witness will not attend at the time and

place appointed, or will not produce documents to the production of which the party is entitled, an application must be made under ss. 8 and 18 of the Act, to a judge at chambers for a subpoena directing the witness to attend and give evidence and produce the documents.

If the witness is in prison, an application should be made to a judge for a writ of *habeas corpus* to bring him up.

28. If the scheduled clause *g* is not negatived by the submission, the witnesses must be examined on oath or affirmation if the arbitrators or umpire think fit, and they will usually require it if either party desires it. The parties also, unless clause *f* is excluded by the submission, must submit (*i. e.* be ready) to be examined on oath or affirmation by the arbitrators or umpire subject to any legal objection.\*

If these clauses are excluded by the submission or so much of them as relates to oath and affirmation, and no clause requiring oath or affirmation is inserted, the evidence can be taken without either.

The forms of oath and affirmation are given among the forms which follow.

29. The usual course of a trial† is often followed in arbitrations, but a different mode is sometimes convenient, especially in matters of account, when it may be desirable to hear each party and the witnesses as to one item or batch of items separately. The same remark applies where part of the dispute has to do with the condition of a house, or the boundaries of land, and the witnesses on both sides who know about it can be got to attend on the spot. •

30. The arbitrator must be careful not to collude, or appear to collude, with either party, nor to hear either party or his witnesses except at a meeting of which the other party has notice and an opportunity of attending, and not to reject any verbal or written evidence, but to receive it even at the last moment unless it is not ad-

\* This means a legal objection to the question put; such as that the questions tend to criminate, or are questions as to communications made by husband to wife, or *vice versa*, after marriage, or are questions as to hearsay, etc.

† The usual course of a trial is for the plaintiff to open his case and call his witnesses and put in his documents, and then (if the defendant has put in no documents and means to put in none and to call no witnesses) to sum up, leaving the defendant to have the last word. If the defendant has put in documents or means to do so, or to call witnesses, the plaintiff does not sum up, but the defendant opens his case, adduces his evidence and sums up, and then the plaintiff replies.

missible under the rules of evidence ; and even then it may be used if not objected to.

The rejection of relevant and admissible evidence will be fatal to the award and, if there is any doubt as to the admissibility of any evidence tendered, it will be safer to take it and note the objection, and, if it is found inadmissible, to come to a conclusion independently of it. If it does not weigh in the arbitrator's mind, its inadmissibility makes no difference. Thus the rejection of admissible evidence is much more dangerous than the admission of what is open to objection. These rules, however, are only mentioned by the way, as the conduct of the inquiry is beyond our scope.

31. Documents requiring a stamp and not stamped at all or insufficiently stamped cannot be given in evidence before an arbitrator any more than in any other civil proceeding until the defect is rectified, and then only if the law allows it to be rectified. By section 14 of the Stamp Act, 1891, the arbitrator<sup>1</sup> is to take notice of the defect of stamp, and, if the document is one which can legally be stamped after execution, may receive the stamp duty and penalty and give a receipt for it and then admit the document in evidence. (The arbitrator has to pay over the duty and the penalty to the officers of the Inland Revenue, who afterwards, on production by the party of the receipt and the document, will affix a stamp making the document free of duty in future.)

### *The Award.*

32. When the evidence and the arguments of the parties or their advocates are closed, the arbitrator will proceed to make his award. This should be prepared with great care,\* because when he has given notice to the parties that the award is ready, he cannot make any material alteration in it unless the court, on the application of one of the parties, refers it back to him. The only correction which he otherwise has power to make is where there is any "clerical mistake or error arising from an accidental slip or omission."

There is no magical form of words necessary to constitute a valid award: what is necessary is that the arbitrator should appear to have finally decided on the matters submitted to him. The award should pursue the submission; that is, the parties should not submit

\* If the arbitrator is not a lawyer, he should lay the submission and his findings before a lawyer, who should prepare the award.



one thing and the arbitrator decide another. The award must not exceed the arbitrator's authority, as by deciding upon a right which has been abandoned or not included, or by awarding that something be done or submitted to by a person not a party to the reference,\* or by giving costs between attorney and client, instead of between party and party, when he had only a general power to give costs.

The award must appear on its face to amount to a decision of all the matters before the arbitrator, though they need not all be mentioned separately. The award must also be consistent in all its parts, and it must be final.

There are certain powers which an arbitrator does not possess, unless they are expressly conferred on him, and which it is desirable he should have, and which, when required, should be expressly given him by the instrument of reference. The chief of these are the power to take evidence by affidavit or statutory declaration, to award costs, and to direct any acts to be done by either party. Clauses conferring these powers have been already given.

An arbitrator may direct which of the parties is entitled to land, and the submission is made a rule of court, the court will issue execution.

When the award is made, the arbitrator's duty is at an end, and he must not hear any further evidence, or alter his award, except by correcting a clerical error as already mentioned. He should inform each party that the award is ready and may be had on payment of his fee, naming it. Where there are two or more arbitrators, they must sign the award together.

33. The award had better be stamped before being delivered to the party entitled to it. It has been the practice to give the original award to the party who is most favoured by it, and a copy only to each of the other parties. But as the stamp duty is low [see "*Stamps*"], there is no reason why the award should

\* As, for instance, that a party shall enter into a bond with sureties; for the sureties being strangers to the reference, the arbitrator has no control over them, and the party's single bond will be enough to satisfy the award. So, if a party is directed to repair a bridge on a stranger's land, it should be expressed to be if the stranger consents. So, if a man is a party to a reference and his wife not, a direction that they shall both convey is bad. But if the party has any legal means of compelling the stranger to do or submit to the thing ordered, the award is good. And so it is where what is required of the stranger is merely to act as an instrument without his prejudicing a right or incurring a liability.



not be executed in duplicate or triplicate, according to the number of parties, and each part be stamped—each party would then have an original award. When any party has paid the full fee for his award (or copy), the others, of course, will each have his award (or copy) without further payment.

As the arbitrator would probably not be entitled (in the absence of an express contract) to recover his charges, it is not the practice to disclose to either party the contents of the award, nor to let the award go, till the charges are paid.

I. SHORTEST FORM\* OF SUBMISSION, REFERRING ALL MATTERS IN DIFFERENCE TO ONE ARBITRATOR.

The                      day of [*month and year*].

We agree to submit all matters in difference between us to the award of E. F.

A. B.  
C. D.

Witness G. H.

II. ANOTHER SHORT FORM† FOR THE LIKE PURPOSE.

We agree to submit all matters in difference between us to the award of E. F., who may thereby direct us or either of us, or the personal representatives of either of us deceased, to do or submit to any act or thing, and to sign or execute any instruments. This submission shall continue in force notwithstanding the death of either of us.

Dated this                      day of [*month and year*].

A. B.  
C. D.

Signed by the said parties‡ in the presence of me,  
G. H.

III. APPOINTMENT BY ARBITRATOR FOR A MEETING.

To A. B. and C. D.‡

I appoint [*Wednesday*] the                      day of [*month and year*], at ten o'clock in the forenoon, at my chambers, 1, King's Bench Walk, in the Temple, for hearing all matters in dispute between you.

Dated the                      day of [*month and year*].

E. F.

\* The Scheduled Forms given in sec. 12 of this Class will be tacitly included so far as they are applicable.

† If the parties sign in the presence of the same witness, whether together or at different times, this attestation will do. Otherwise, instead of "parties" put "A. B." or "C. D.," as the case may be, and have a separate attestation for the other.

‡ Where the parties act by solicitors the notice should be addressed to them as in the following form.

## IV. APPOINTMENT BY ARBITRATOR FOR TWO MEETINGS.

In the matter of a reference between A. B., C. D., and E. F., I appoint Wednesday the 10th and Friday the 12th days of January instant at eleven o'clock in the forenoon at my chambers [*address*] for proceeding in this reference.

Dated the            day of [*month and year*].

G. H.

To the Messieurs U. & V., solicitors for A. B., Messieurs W. & X., solicitors for C. D., and Mr. Y., solicitor for E. F.

## V. APPOINTMENT OF MEETING, WITH NOTICE OF INTENTION TO PROCEED EX PARTE.

In the matter of a reference between A. B. and C. D.

I appoint Monday the            day of [*month and year*], at eleven o'clock in the forenoon, at [*place*] for proceeding in this reference, and I give you notice that, if either party absents himself without having previously shown to me good and sufficient cause for doing so, I shall proceed *ex parte* at the request of the other party.

Dated the            day of [*month and year*].

E. F. [*Arbitrator*].

To Mr. X., solicitor for A. B., and to Mr. Z., solicitor for C. D.

## VI. NOTICE TO APPOINT A SINGLE ARBITRATOR.

The            day of [*month and year*].

I require you within seven clear days after the service of this notice to concur in appointing an arbitrator for deciding the matters in difference between us, pursuant to our articles of partnership.

A. B.

To C. D.

## VII. NOTICE REQUIRING THE FILLING UP OF A VACANCY.

In the matter of a reference of matters in dispute between A. B., C. D., and E. F.

The            day of [*month and year*].

I require you within seven clear days after the service of this notice to concur in appointing an arbitrator herein, in the place of X. Y., who has died.\*

A. B.

To the ~~above~~-named C. D. and E. F.

## VIII. NOTICE REQUIRING THE APPOINTMENT OF AN UMPIRE.

In the matter of a reference of matters in dispute between A. B. and C. D.

\* Or "refuses to act," or "has become incapable to act," as the case may be.

The                      day of [*month and year*].  
 I require you within seven clear days after the service of this notice to appoint an umpire herein.\*

A. B.

To E. F. and G. H., the arbitrators.

#### IX. †APPOINTMENT OF UMPIRE.

We, the within-named †E. F. and G. H., appoint J. W. S., of the Inner Temple, esquire, barrister-at-law, to be umpire between us concerning the matters within referred. Witness our hands this                      day of [*month and year*].

E. F.

G. H.

#### X. ENLARGEMENT OF TIME BY ARBITRATORS.§

We, the within-named E. F. and G. H., hereby enlarge the time for making our award until the                      day of [*month and year*].

E. F.

G. H.

#### XI. AWARD UNDER THE FIRST FORM OF SUBMISSION GIVEN ABOVE.

I, the undersigned, being the arbitrator to whose award A. B. and C. D. on the                      day of [*month and year*] submitted all matters in difference between them, and having heard them [and their respective advocates], and having heard and considered the evidence adduced by them respectively, award as follows :

1. C. D. is indebted to A. B. in the sum of £100, the price of the horse *Blue Jacket*, and is immediately to pay him that amount.

2. The other matters in difference between the parties do not result in any right or liability on either side.

3. C. D. is to bear and pay his own costs of the reference and award, and is to pay to A. B. £30 towards his costs of the same, and A. B. is to bear and pay the remainder of such costs.

Dated this                      day of [*month and year*].

E. F. [*Arbitrator*].

Signed and published by the said E. F. as his award (being

\* Add "in the place of Z., who has died," or "refused to act," or "become incapable to act," if either of these is the case.

† This is to be endorsed on the instrument of reference. It must be made before the time for making the award has expired, and must be signed by both arbitrators together.

‡ Arbitrators.

§ This is to be endorsed as the above. It must be made before the original time, or any extension of it, has expired, and must be signed by both arbitrators together.

first duly stamped) the day and year last aforesaid in the presence of me,

J. K.

**XII. AWARD UNDER THE SECOND FORM OF SUBMISSION  
GIVEN ABOVE, ONE PARTY BEING DEAD.**

Whereas by a submission dated the 10th day of September, —, A. B. and C. D. referred all matters in difference between them to the award of me E. F., esquire, barrister-at-law, and, among other powers, gave me power to the end that I might decide such matters to direct that they or either of them, or the personal representatives of either of them deceased, should do or submit to any act or thing and should sign or execute any instrument. And Whereas after I had entered upon the reference, to wit, on or about the       day of [*month and year*], the said A. B. died. And Whereas the said parties and, after the death of the said A. B., his personal representative J. S., have appeared before me and I have heard and considered the evidence adduced by them respectively, and have heard their respective advocates. And Whereas on the       day of [*month and year*], by writing under my hand indorsed on the said submission, I enlarged the time for making my award until the       day of [*month and year*]. Now therefore I award as follows:—

1. In respect of the contract undertaken by A. B. and C. D. jointly for the Starbridge Waterworks, C. D. owes £500 to the estate of A. B., and is to pay that sum to J. S., as the personal representative of A. B. deceased.

2. In respect of the contract undertaken by A. B. and C. D. jointly concerning the Oldminster Irrigation Works and the sums paid as damages by the said parties in regard of the same, A. B.'s estate is indebted to C. D. in the sum of £100, and I direct the said J. S. to pay the same to C. D.

3. On such payments being made, I direct that each party shall give a receipt to the other, and that they shall execute mutual releases.

4. There are no other matters in difference between the parties.

5. In respect of this reference and award I tax and allow the costs of the said A. B. and the said J. S. thereof as between party and party at £150, and the costs of the said C. D. thereof as between party and party at £75.

6. I direct the said C. D. to pay the £150 so allowed to Mr. Z., the solicitor of A. B. and of the said J. S., and I direct the said J. S. to pay the sum of £75 so allowed to Mr. Y., the solicitor of C. D.

Dated this       day of [*month and year*].

E. F. [*Arbitrator*].

Signed and published by the said E. F. as his award (being

first duly stamped) the day and year last aforesaid in the presence of me,

J. K.

### XIII. AN AMPLER FORM OF AGREEMENT TO REFER.

Agreement made this       day of [*month and year*], between A. B., of       , and C. D., of       .

1. Whereas the said parties were some time since concerned together in trade as       , and whereas differences and disputes have arisen with respect to the said trade, and the accounts relative thereto, and, for the purpose of putting an end to such differences and disputes, the said parties have agreed to refer the same, and\* all other disputes and differences between them, to arbitration, as hereinafter mentioned, it is agreed as follows:—

2. The said parties agree to refer to E. F., of       , and G. H., of       , the differences and disputes aforesaid. So that the award of the said arbitrators, or their umpire, be made on or before† the       day of       next, or such further time as they or he shall, by indorsement hereon, from time to time appoint, but not later than       months from that day.

3. Before entering on the reference the said arbitrators shall, by writing under their hands, appoint an umpire‡ to decide in case of difference.

4. The death, marriage, or bankruptcy of any party, and the death of any arbitrator or umpire, shall not abate or determine the reference,§ and in the event of any party so dying, his [*or her*] personal representatives shall be parties to the reference.

5. Each of the said parties within       days of the signing of this agreement shall deliver to the other of them, and to

\* If there are any disputed questions, however unconnected with the business referred to, and which either party is unable to bring forward at the arbitration, the words “and all other disputes and differences between them” should be carefully omitted; for if such disputes are not insisted on before the arbitrator, they can never be brought forward after an award which decides certain matters, and finds that there are no other disputes between the parties.

If there are more than two parties to the submission, and the words above mentioned are retained, you insert after “them” the words “or any of them,” or, if one party does not wish to refer all the disputed matters between himself and every one of the others, omit his name here, and state the names of those who do so refer all their differences; thus, “and between the said A. B., C. D., E. F., or any of them.”

† See Class vii, s. 12.

‡ Here it may be prudent to add, “being a barrister-at-law, of not less than seven years’ standing,” or in some other way to limit the appointment to one of a class.

§ The death of the arbitrators or umpire would not determine the reference if nothing were said about any of them dying; but their death is specially mentioned here (perhaps unnecessarily), lest it should be supposed that the mention of the death of parties was intended to *exclude* that of arbitrators or umpire.

each of the arbitrators or their umpire, a full and particular account in writing of all his claims, and of all the items thereof, giving credit for all payments, counter-claims and deductions, and leaving a margin of at least two inches and a half on each page, and shall at the same time deliver all contracts, writings, maps, plans, and drawings,\* or copies thereof, that may be necessary to illustrate the said account.

6. Each of the said parties, within        days of receiving the said accounts from the other of them,† shall state in writing against each item, either actually or by reference, in the margin of the said accounts or of a copy thereof, whether he admits such item in the whole, or in any, and what amount; and, in case he objects to such item, shall so state whether he objects to the whole, or to any and what part thereof, and, as far as possible, the grounds of such objection, with reference to maps, plans or drawings, where necessary to illustrate such objection; and each of the parties shall deliver such statement to the other of them,‡ and to each of the arbitrators, or their umpire.

7. The same course shall be adopted concerning any set-off or counter-claim, adduced by either of the parties against the demands of the other§ of them.

8. The said arbitrators, or their umpire, shall have general authority to require from either of the said parties such written statements and explanations as may be required.

9. The said arbitrators, or their umpire, may at discretion admit as evidence any affidavit or statutory declaration concerning the matters in difference, a copy thereof having been given three days previously to the party against whom the same is offered; but the person whose evidence is so taken shall be subject at any time to cross-examination by such party, if he thinks fit to bring him or her before the said arbitrators or umpire.

\* It would be convenient if maps, plans, etc., could be agreed upon, so that those used by one party should be copies of those used by the other, except that each would use his own marks and references to illustrate his claims and objections.

† If there are more than two parties say "to the other or others of them against whom he has claims."

‡ If there are more than two parties, say "to the other or others of them whom it concerns."

§ If there are more parties than one, say "the others or any of them." If the accounts and claims are simple, this plan will be of great benefit, but if they are complicated, it will be of still greater benefit. The above clauses require the parties to do for themselves cheaply and well that which the arbitrators would otherwise have to do for them while taking evidence, and with far less accuracy, and at a great waste of time and, consequently, of money.

|| Where evidence of a simple or formal character has to be given by persons who are sick, or at a distance, it may well be taken in this way, and even in other cases it may be desirable; but the evidence of the parties and material witnesses should in general be taken orally. The provision for eventual cross-examination at the

10. In case of either party failing to attend personally, or by attorney or counsel, before the said arbitrators or umpire, at any meeting which they or he may appoint, it shall be lawful for them or him to proceed *ex parte* as effectually as if such party were present.

11. The arbitrators or umpire may employ a shorthand writer to take down the evidence and other proceedings *verbatim*, and to make one or more transcripts of his notes in manuscript or type-writing from time to time for the use of the arbitrators or umpire, and the costs of such employment shall be in the discretion of the arbitrators or umpire.\*

12. The said arbitrators or umpire may direct either party to do, or submit to, any acts, or to sign or execute any written instruments, and may name any barrister-at-law by whom such written instruments may be prepared, in case the parties cannot agree on them.

13. The costs of this reference and of any acts which either of the said parties may be directed to do or submit to as aforesaid, and the costs, charges and expenses attending the preparation of any written instruments which either of them may be directed to sign or execute as aforesaid, shall be in the discretion of the said arbitrators or their umpire.

14. All legal proceedings shall be stayed until the said† day of [*month and year*], and until the day to which, from time to time, the power to make an award shall be enlarged as hereinbefore provided. In witness whereof the said parties have hereto set their hands.

A. B.

C. D.

Signed by the said‡ parties in the presence of me,

J. K.

#### XIV. § WITNESS'S OATH.

“ You shall true answers make to all such questions as shall be asked of you touching the matters in question between the parties to this reference. So help you God ! ”

option of the party against whom the written evidence is offered lessens the evils attendant on that mode of taking testimony.

\* Or “ shall be borne by the parties in equal proportions.” See remarks in s. 18 of this Class.

The day for making the award.

See note to Attestation in Form ii.

Christians are sworn on the four Gospels or by holding up the open right hand, Jews on the Old Testament or Talmud, Mohametans on the Koran, and persons of other religions in the way they consider most binding on their consciences. The witnesses may be examined on oath or affirmation, though the instrument of reference is silent on the subject. But the arbitrator is not bound to administer either the oath or the affirmation, unless the instrument not merely permits it, but requires it.

**XV. AFFIRMATION BY PERSON OBJECTING TO BEING SWORN.\***

“ I, A. B., do solemnly, sincerely, and truly declare and affirm that I shall true answer make to all such questions as shall be asked of me touching the matters in question between the parties to this reference.”

\* By the Oaths Act, 1888, ss. 1, 2, “ Every person objecting to being sworn and stating, as the ground of such objection, either that he has no religious belief or that the taking of an oath is contrary to his religious belief ” may make affirmation in lieu of an oath in the form given above down to and including “ affirm ” and then proceeding with the words of the oath prescribed by law, omitting any words of imprecation or calling to witness.



## CLASS VIII.—COUNTY COURT FORMS.

1. The County Court has jurisdiction over all personal actions in which not more than £50 is claimed, whether on a balance of account or otherwise, and, as the greater number of these are begun and conducted by the parties themselves without a lawyer's help, a few forms to be used in such actions may be usefully given here. But there are many other important matters within the jurisdiction of the Court which cannot with advantage be here dealt with.\*

2. Partners may sue in the firm name, but must be prepared to state of whom the firm consists, and an action may be brought against partners in the firm name if they were partners when the cause of action arose, and process may be served on one partner anywhere or at the place of business on the person in charge.

If two people join as plaintiffs and one has a right to succeed and the other not, the former may have judgment but the defendant is entitled to any costs he has incurred by the other being joined.

An infant may sue as if he were of age for any sum up to £50 which he claims for wages or piece-work or work as a servant; but, if he sues for anything else (for example, damages for personal injuries), he must, on entering his plaint, bring with him a "next friend," who will be responsible for costs.

When an infant is sued, the summons may be served

\* The Court may try actions of ejectment where the land claimed is not rented at or worth more than £50 a year; and can deal, in the same manner as the Chancery Division can, with certain equitable claims where the subject-matter does not exceed £500 in value. These claims may relate to the administration of the estates of deceased persons, the execution of trusts, foreclosure or redemption, the specific performance, reformation or cancellation of a contract; questions under the Trustee Relief Acts; the maintenance of infants; the dissolution of partnership and relief against fraud or mistake. The Court may also be required to act in matters arising under various statutes.

Certain of the County Courts also entertain Bankruptcy and Admiralty causes.

on his guardian or on the person with whom he lives. An infant, if he defends, will do so by guardian and, if he has no guardian, the Court can appoint any person willing to act or the Registrar as guardian for the action. No guardian appointed by the Judge is responsible for costs.

When the amount claimed exceeds £5, and with leave when it does not, either party may, five days before the return day of the summons, give the Registrar a notice in writing demanding a jury and lodge 5s. with him, and the action will then be tried by a jury of five men. Where the amount claimed does not exceed £2, the Registrar may try the cause by leave of the Judge, provided that the parties both consent. •

The action is to be brought in the district in which the defendant or one of the defendants dwells or carries on business at the commencement of the action ;—or, by leave, where the defendant or one of the defendants dwelt or carried on business within six months before or, by leave, where the cause of action arose. But all the districts of the metropolitan courts are, for this purpose, treated as one.

3. The action is begun by the plaintiff, or some one on his behalf, going to the office of the court, and requesting the officer to enter in the plaint-book a plaint claiming a certain sum from the defendant.\* At the same time, where the claim exceeds forty shillings, there must be delivered to the officer a written statement of the plaintiff's claim, called "particulars of demand," for the use of the court; and as many copies thereof as there may be defendants. The latter are served on the defendants, together with the summons requiring them to appear. Plaintiff should also keep another copy for his own use. The Registrar will give the plaintiff a plaint-note which identifies him with the case, and which he must take with him whenever he goes to the office about his case.

No precise form is required for particulars of demand; it is enough if they clearly inform the defendant of the nature of the claim made against him.

If the claim is for work done for the defendant or for

\* The request is made by filing a *præcipe* or written order containing the christian name and surname, description and residence or place of business of the plaintiff; the surname and residence or place of business of the defendant and (where known) his christian name and description, the number of his house or place of business and the name of the street and a short statement of the cause of action and the amount claimed. This may also be sent by letter to the Registrar with copies of the particulars of demand, a P. O. order, and a prepaid envelope addressed to the plaintiff.

goods sold to him or for money lent to him or expended for him, the particulars should state the items and, as far as possible, the dates.

### I. PARTICULARS OF A MONEY DEMAND.

In the County Court of [*county*], holden at

Between A. B. . . . . Plaintiff,  
and

C. D. . . . . Defendant.

The following are the particulars of the plaintiff's claim:—

		£	s.	d.
January 1, 18—.	For sinking a well at King's Mill, including brickwork .	5	10	0
' „ 10, „	For 5,000 4-inch drain-pipes, at £1, sold and delivered .	5	0	0
„ 11, „	For digging a drain from the back yard of the mill to the corner of the paddock, 3 ft. deep, 150 yards, and laying in the pipes . . . .	2	10	0
			0	0
	Deduct—			
	Cash paid on account £5 0 0			
	One month's agistment of horse . 1 0 0			
		6	0	0
	Balance claimed .	£7	0	0

### II. ANOTHER FORM, WHERE DATES ARE UNCERTAIN.

[*Commence as before.*]

	£	s.	d.
For ten days' work, at 5s. a day, done for you in your garden at various times between Lady-day and Midsummer, 18— . . . .	2	10	0

### III. FOR AN AGREED BALANCE.

[*Commence as before.*]

	£	s.	d.
For balance of accounts, agreed upon 1st January, 18— . . . . .	10	0	0
Deduct cash received at various times since that date . . . . .	4	0	0
Balance claimed .	£6	0	0

## IV. FOR AN ASSAULT AND BATTERY.

[Commence as before.]

	£	s.	d.
For assaulting and beating the plaintiff on the 1st January last, at [place] . . . . .	10	0	0

## V. FOR DAMAGES BY A COLLISION.\*

[Commence as before.]

	£	s.	d.
For injury done to the plaintiff, and his horse and cart, by defendant's negligent driving on the day of [month and year], at [place]. . . . .	25	0	0

4. If in any action of contract the plaintiff claims more than £20, or if in any action for a wrong the plaintiff claims more than £10, the defendant, five clear days before the day named in the summons for the trial, may personally or by post, give notice to the Registrar and to the plaintiff that he objects to the action being tried in the County Court and may give security to be approved by the Registrar for the amount claimed and for the costs of the trial in the superior court, not exceeding in the whole £150; after which all proceedings in the County Court will be stayed. The following is the form of notice to be given to the Registrar for this purpose:—

## VI. NOTICE OBJECTING TO A CAUSE BEING TRIED IN THE COUNTY COURT.

No. of Plaintiff.

In the County Court of [county], holden at [place].

Between A. B. . . . . Plaintiff,

and

C. D. . . . . Defendant.

Take notice that under the provisions of Section 62 of the County Courts Act, 1888, I object to this action being tried in the County Court; and I propose† as my sureties [*here state the full names and additions of the sureties, whether house-keepers or freeholders, and their residences for the last six months, therein mentioning the county or city, places, streets and numbers, if any*]. Dated this . . . day of [month and year].

C. D., Defendant.

To the Registrar of the said Court. •

\* If the plaintiff's wife was hurt, let them both be plaintiffs. his child was hurt, let a separate action be brought in the child's name by the father as his next friend.

† Or you may say here "to deposit a sum of money in lieu of giving sureties."

The defendant, after giving the notice, must obtain the certificate of the Judge that some important question of law or fact is likely to arise, and for that purpose must make an affidavit as follows or, what is better, get his solicitor to make it for him.

# VII. AFFIDAVIT TO OBTAIN CERTIFICATE OF JUDGE UNDER SECT. 62.

[*Begin with No. of Plaintiff, Court and Parties.*]

I, C. D., of \_\_\_\_\_, \* the above-named defendant, make oath and say :

1. This action is brought for [*here state cause of action*].

2. In my opinion important questions of law [*or fact, or law and fact*] will arise in this action.

3. The important questions are the following [*here state them*].

4.† The facts which are likely to raise the questions of law above mentioned are as follows [*here state the facts relied on*]:

Sworn at \_\_\_\_\_, in the County of \_\_\_\_\_

\_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_

One thousand eight hundred and \_\_\_\_\_

C. D.

\_\_\_\_\_, before me,

5. A defendant may save himself the hearing fee and all the expenses of witnesses, etc., for the trial by giving a written notice to the Registrar, five clear days before the day of hearing, confessing the plaintiff's claim. The notice may be signed before the Registrar or his clerk at his office or before a solicitor anywhere ; but, in the latter case, the solicitor must make an affidavit verifying the defendant's signature and annexing the notice. The court then at the next sitting will give judgment for the amount confessed.

If the defendant admits part of the claim only, he may, five clear days before the day of hearing, pay to the Registrar the sum admitted to be due due with costs in proportion and may defend for the rest and escape all costs if successful.

The following is the form of the notice :

\* Or E. F. of \_\_\_\_\_ solicitor for the above-named defendant.

† This paragraph is to be added when a question of law will arise.

## VIII. NOTICE CONFESSING CLAIM OR PART THEREOF.

No. of Plaintiff.

In the County Court of [county], holden at [place].

Between A. B. . . . Plaintiff,  
and

C. D. . . . Defendant.

I, the defendant, do hereby confess and admit that the sum of £ , the amount claimed [or the sum of £ , part of the amount claimed] by the plaintiff in this action, is due to him from me [and that I will pay the same by instalments of ]. Dated this day of [month and year].

C. D., Defendant.

Signed in the presence of  
[Signature of Registrar, his  
clerk, or a Solicitor.]

6. There are similar provisions with reference to an agreement between plaintiff and defendant as to the amount due, and the mode in which it is to be payable; and this agreement may be signed *at any time before the case is called on*. After this agreement has been signed before the Registrar or his clerk or before a solicitor, and, in that case, proved to the Registrar by affidavit, the Registrar may enter up a judgment according to the terms of the agreement. The following is the form :

## IX. AGREEMENT BETWEEN PLAINTIFF AND DEFENDANT AS TO AMOUNT OF CLAIM AND MODE OF PAYMENT.

[Commence as in last preceding form.]

We, the plaintiff and defendant, do hereby agree that the amount of the debt or demand due from the defendant to the plaintiff is £ , and that the same, with £ for the plaintiff's costs, and £ , the Court fees, amounting together to the sum of £ , shall be paid to the Registrar, at his office at , in manner following, that is to say [state how].

Dated this day of [month and year].

A. B., Plaintiff.

C. D., Defendant.

Signed in the presence of  
[Signature of Registrar, his  
clerk, or a Solicitor].

If the defendant does not want time, he may pay into court the whole or part of plaintiff's claim with costs thereon; and, if he does so five clear days before the day named for the trial, and the plaintiff goes on, and no more should be due, the defendant will have costs awarded to him. For this no form is required.

7. There are also certain special defences, ten in number, from which the defendant will be precluded, unless he have given notice of them to the Registrar in the manner to be presently mentioned, or unless the Judge at the trial thinks fit to adjourn the case to enable such notice to be given. These defences are—

- (1) Set-off or counter-claim.
- (2) Infancy.
- (3) That defendant is a married woman.
- (4) That the debt is barred by a Statute of Limitations.
- (5) A release under any statute relating to Bankrupts or for the relief of Insolvent Debtors.
- (6) That a libel or slander complained of is true.
- (7) That certain circumstances mitigate the damages for a libel or slander.
- (8) Statutory defence in an action claiming damages as for a wrong; or any defence which any Statute requires a person relying on such defence to give notice of it.
- (9) Defence on the ground of equitable estate or right, or claiming relief upon equitable grounds.
- (10) Tender of the amount due.

Five clear days before the day of hearing, a defendant who intends to take advantage of any one or more of these defences must give to the Registrar a notice in writing of such intention, and as many copies of such notice as there may be opposite parties. The notice must contain the defendant's name and address together with a concise statement of the grounds of defence. The Registrar, within twenty-four hours, is to transmit by post to each of the opposite parties a copy of such notice; but the defendant is not bound to prove that the letters came to hand. The defendant should also keep another copy as a memorandum for himself or his legal adviser.

The notice of each of the defences is required to contain certain particulars, to which attention will be called in the following forms, and the notes thereto:—

#### X. NOTICE OF SET-OFF OR COUNTER-CLAIM.

No. of Plaintiff.

In the County Court of [*county*], holden at [*place*].

Between A. B. . . . . Plaintiff,

and

C. D. . . . . Defendant.

Take notice that the defendant intends at the hearing of

this action to claim a set-off [or to set up a counter-claim] against the Plaintiff's demand, the particulars of which are annexed hereto.\*

Dated this            day of [*month and year*].

C. D., the Defendant,

Whose address is [*state address*].

To the Registrar of the Court.

#### XI. NOTICE THAT THE DEFENCE IS INFANCY.

No. of Plaintiff.

In the County Court of [*county*], holden at [*place*].

Between A. B. . . . . Plaintiff,

and

C. D. . . . . Defendant.

Take notice that the defendant intends at the hearing to rely upon the following ground of defence.

Dated this    day of [*month and year*].

C. D., the Defendant,

address is [*state address*].

To the Registrar of the Court.

That the Defendant was an infant, within the age of twenty-one years, when the supposed claim arose [*or the supposed contract or agreement was made*], and that he was born, he believes, at           , in the county of           , on the            day of [*month and year*].

#### XII. NOTICE OF COVERTURE [*i.e.* MARRIAGE] AS A DEFENCE.†

[*Follow the Heading and Notice as in the case of Infancy, and then proceed.*]

That the Defendant is now [*or was at the time when the supposed claim arose or when the supposed contract or agreement was made*] the wife of X. Y., of           , and that she was married to him at           , in the county of           , on the day of [*month and year*], and that he resides at           , in the county of [*county*].

\* A copy of the particulars must be attached to the notice and each of the copies. They may be in the form of particulars of demand as given above, but must be headed "particulars of set-off" [*or "of counter-claim"*].

† This is very seldom a complete defence now, but, when judgment is given against a married woman, execution is confined to her separate estate.



**XIII. NOTICE OF A STATUTE OF LIMITATIONS AS A DEFENCE.**

*[Follow the Heading and Notice as in the case of Infancy, and then proceed].*

That the claim for which the Defendant is summoned is barred by a Statute of Limitations [*here set forth\* the Statute and the date from which it began to run*].

**XIV. NOTICE OF DEFENCE UNDER THE BANKRUPT LAWS.**

*[Follow the Heading and Notice as in the case of Infancy, and then proceed.]*

That the Defendant is a discharged bankrupt, and obtained his order of discharge from the [*here state Court*] on the day of [*month and year*].

*Or*

That the Defendant was discharged by resolution of his creditors under sec. 125 of the Bankruptcy Act, 1869, which was duly registered in the London Court of Bankruptcy [*or chambers, as the case may be*] on the                      day of [*month and*

*Or*

That the Defendant was discharged by composition or scheme of arrangement pursuant to sec. 18 of the Bankruptcy Act, 1883, on the                      day of [*month and year*].

**XV. NOTICE OF JUSTIFICATION OF LIBEL OR SLANDER.**

*[Follow the Heading and Notice as in the case of Infancy, and then proceed.]*

That the libel [*or slander*] complained of is true in substance and in fact.

\* This direction is copied from the forms published by authority. The expression "set forth" is a mistake; all that you are required to do is to state the year of the reign and the chapter. A defendant relying on the lapse of time as a defence had better consult a lawyer as to the statute which bars the remedy in the particular case.

It is enough to say here that if the action is brought for any debt on simple contract (that is, not arising under a sealed instrument), or for any trespass to or conversion or detaining of goods or chattels, the time will be six years and the statute will be the 21st of James I, c. 16.

If the action is to recover land or money secured by any mortgage judgment or lien, or otherwise payable out of or charged upon any real estate or for any legacy, the time will be twelve years and the statute the Real Property Limitation Act, 1874.

If the action is to recover a share of the personal estate of any person who has died intestate, the action is barred after twenty years by the 23 and 24 Vict. c. 38.

These times count from when the right first accrued or from the last payment, written acknowledgment or account; as to which see Class II.

**XVI. NOTICE OF DEFENCE IN MITIGATION OF DAMAGES  
FOR LIBEL OR SLANDER.**

*[Follow the Heading and Notice as in the case of Infancy, and then proceed.]*

That the libel [or slander] was published under the following circumstances [*stating them*], and the defendant relies on these circumstances in mitigation of damages.\*

**XVII. NOTICE OF STATUTORY DEFENCE TO ACTION FOR A  
WRONG.**

*[Follow Heading and Notice as in the case of Infancy, and then proceed.]*

That the defendant is not guilty pursuant to statute. •

That no notice of action was given to the defendant pursuant to [*here state the year and chapter, or the short title of the Statute, and the section*].†

**XVIII. NOTICE OF EQUITABLE DEFENCE.**

	No. of Plaintiff.
In the County Court of [ <i>county</i> ], holden at [ <i>place</i> ].	
Between A. B. . . . .	Plaintiff,
and	
C. D. . . . .	Defendant.

Take notice that the defendant intends at the hearing of this action to rely as a matter of defence on the statement hereunto annexed.

Dated this            day of [*month and year*].

C. D., the Defendant,

Whose address is [*state address*].

To the Registrar of the Court.

*Statement.‡*

The facts constituting the equitable defence to this action

\* With this latter defence the defendant should pay money into Court, but without a denial of liability; for that is not allowed in actions of libel or slander. The payment must be made five clear days before the hearing and must be accompanied with proportionate costs. (See Order ix, rule 11.) The money will be paid to the plaintiff, and, if he elects to proceed and recovers no more, he has to pay the costs incurred by the defendant in having to go to trial. (See the Act, s. 107.)

† It is a common thing for statutes which impose duties on magistrates, officers of Courts, and other public officials to exempt them from actions unless they have previous notice of the action, usually a month's notice; and this form is to enable them to take advantage of this notice not having been given. •

‡ It needs a lawyer to say when there is an equitable defence and how to state it. The rules of equity are less intelligible to a non-professional man than those of law. In addition to the statement of facts, each of the grounds of equitable defence is, by Order x, rule 19, required to be set forth.



costs, he should pay in at least five clear days before the hearing, and with proportionate costs, unless his defence is tender before action. The Registrar will then give notice to the plaintiff, who, if the money is less than the claim, may or may not accept it in satisfaction. If the money is paid in less than five clear days before the hearing, or is paid in at any time without costs, the plaintiff may have costs for coming to take it out in satisfaction or may go on and have costs on what he recovers. If the plaintiff chooses to be satisfied with what is paid in, he should send by post to the Registrar and to the defendant or should serve on them a notice as follows :—

XXI. ACCEPTANCE OF SUM PAID INTO COURT.\* •

[*Heading with No. of Plaint, Court, and Cause as before.*]

Take notice that the Plaintiff accepts the sum of £ , paid by the Defendant into Court, in satisfaction of the claim in respect of which it is paid in.

Dated this            day of [*month and year*].

A. B., Plaintiff.  
[*address*].

10. In all actions and counter-claims except for libel and slander the defendant may, five clear days before the hearing day, pay into Court a sum with proportionate costs accompanied by a denial of liability, in which case he will, with his payment, give the Registrar the following notice and a copy (to be sent by the Registrar to the plaintiff).

XXII. NOTICE OF PAYMENT INTO COURT WITH DENIAL OF LIABILITY.

[*Heading with No. of Plaint, Court, and Cause as before.*]

Take notice that the above-named Defendant [*or C. D., one of the above-named defendants*] has paid into Court the sum of £        in satisfaction of the whole of the plaintiff's claim herein or of so much of the plaintiff's claim herein as related to [*here state the part of the claim in respect of which you pay in*].

And further take notice that, notwithstanding such payment, the Defendant denies his liability.

And further take notice that the address of the said defendant is as follows [*state the address*].

\* By Order ix, rule 12, if the plaintiff sends the notice within such reasonable time before the hearing day as the time of paying in permits (whether the paying in was within the five clear days or not) he stops the defendant's costs. If the notice is not given, the action may proceed.

Dated this            day of [*month and year*].

C. D.,

The above-named defendant.

To the Registrar of the Court  
and to A. B., the above-named plaintiff.

11. When a plaintiff or defendant desires to give in evidence any document and can prove it himself he has no need to give any notice, but if he has to call a witness to prove the document he will not be allowed costs in respect of that witness (unless the Registrar specially allows them) without having given the following notice (Order xviii, rule 5) not less than five clear days before the hearing. If the admission is not made within three days of the receipt of the notice, the party giving the notice will, if successful, be allowed the costs of proving the documents.

### XXIII. NOTICE TO ADMIT AND INSPECT.

No. of Plaintiff.

In the County Court of [*county*], holden at [*place*].

Between A. B. . . . . Plaintiff,

and

C. D. . . . . Defendant.

Take notice that the plaintiff [*or defendant*] in this action proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [*or plaintiff*], his solicitor or agent, at            on            the            day of [*month and year*], between the hours of            and            . And the defendant [*or plaintiff*] is hereby required within forty-eight hours from the last-mentioned hour to admit (saving all just exceptions to the admissibility of all such documents as evidence in this action) that such of the documents as are specified to be originals 'were respectively written, signed or executed as they purport respectively to have been; that such as are specified as copies are true copies, and that such documents as are stated to have been served, sent or delivered were so served, sent or delivered respectively.

Dated this            day of [*month and year*].

[*Signature of Plaintiff or Defendant.*]

To [*the Defendant or Plaintiff*].

### ORIGINALS.

#### Description of Document.

Deed of Covenant between A. B. of the first		
part and C. D. of the second part ...	...	January 1, 18—
Letter—Defendant to Plaintiff ...	...	March 1,

## COPIES.

Description of Document.	Dates.	Original or duplicate served, sent, or delivered, when, how and by whom.
Register of baptism of A. B. in the parish of × ... January 1, 18— Letter—Plaintiff to Defendant February 1, 18—		Sent by General Post, February 2, 18—

12. Any party may, without filing any affidavit, apply to the Judge or Registrar for an order requiring any other party to make discovery of all documents which are or have been in his possession relating to any question in the action or matter, and the order will require the party to make an affidavit stating the documents. A party may also obtain leave to address interrogatories, or questions, to an opposite party, which the latter has to answer on affidavit.

In these affidavits, as well as in his particulars of claim or defence, a party may have to mention several documents. His opponent can then, by written notice, require him to produce for inspection all such documents as are in his possession or control. (Order xvi, rules 13, 14.) The following is the

## XXIV. NOTICE TO PRODUCE DOCUMENTS FOR INSPECTION.

[*No. of Plaintiff, Court and Cause.*]

Take notice that the plaintiff [*or defendant*] requires you to produce for his inspection the following documents referred to in your [*particulars of claim, or of defence, or affidavit*] dated the       day of [*month and year*].

[*Describe documents required.*]

[*Signature of plaintiff or defendant.*]

To the [*defendant or plaintiff*].

13. *The Notice to Produce at the trial is of great importance and is often required. Wherever you wish to state the contents of an instrument which you have not got, and which the other party has in his possession, or in the possession of his Solicitor, you must give him*

notice to produce it before you can give the evidence in question. Thus, suppose you were suing for the board, lodging and teaching of the defendant's boy, and you wished to prove that you had written to defendant to say, "If your boy is an invalid, I will not take him for less than £25 a quarter," and that the defendant had written back to say, "I agree to your terms," it would not be sufficient for you to produce his letter, duly stamped, without giving him notice to produce yours. The same of a bill delivered, and other documents.\* Sometimes, where the document is not in court, the trial will be adjourned, on payment of costs, to allow the notice to be given. The following is the form; but "plaintiff" may require to be changed into "defendant" and *vice versa*—

#### XXV. NOTICE TO PRODUCE.

*[State the No. of Plaintiff, the Court, and the Parties, as in Form vi, and then go on as follows.]*

Take notice that you are hereby required to produce at the trial of this cause the following documents, namely :

Letter written by plaintiff to you about the beginning of January, 18—, saying he would charge extra for your son.

Bills of plaintiff's charges for your other son's schooling, for the quarters ending respectively 25th March, 21st June and 29th September, 18—, and letters accompanying the same.

v

†A. B., the Plaintiff.

To the above-named defendant and his solicitor.

The following is given in the County Court as the "general" form of the foregoing notice, but when you know exactly what you want, you may omit the general words as in the preceding form.

#### XXVI. NOTICE TO PRODUCE (GENERAL FORM).

*[State No. of Plaintiff, title of Court, and names of Parties to Cause.]*

Take notice that you are hereby required to produce and shew to the Court on the trial of this cause all books, papers,

\* The fact of your having copies will not dispense with the notice. The only documents which you need not give notice to produce are notices; and these excepted because if you had to give notice to produce a notice, you would have to give another notice to produce the former, and so on, and the notices would be endless.

† Or G. H., solicitor for the plaintiff.

letters, copies of letters, and other writings and documents in your custody, possession or power, containing any entry, memorandum or minute relating to the matters in question in this cause, and particularly [*specify them*].

Dated this            day of [*month and year*].

[*Signature.*]

To the above-named plaintiff [*or defendant*] or his solicitor.

Observe that this notice is of no use where the instrument, the contents of which you wish to give in evidence, is not in the possession or power of the other party, but in the hands of a person who is neither plaintiff nor defendant. In the latter case you must procure a subpoena, requiring the person who has the document to attend and produce it. •

Observe also that, if you want your opponent to produce a document the contents of which you do not know, you must subpoena him.

The last three notices may be sent by post, instead of being served personally or at the house; but if so sent, they must be posted so as to arrive in time, and the person posting should keep a copy, and make a note thereon of the time and place of posting.

14. Section 86 of the Act enables the plaintiff to issue a different sort of summons, called a default summons, where his claim is for a debt or liquidated demand.\* He may have this summons as a matter of right where the claim is above £5, or where, though below that amount, it is "for the price, value or hire of goods which—or some part of which—were sold and delivered or let on hire to the defendant to be used or dealt with by him in the way of his trade, profession or calling." He may also have a default summons, by leave of the judge or registrar, though the demand does not exceed £5, and is not of the sort last mentioned, if the defendant be not a domestic or menial servant, servant in husbandry, journeyman, artificer, handicraftsman, miner, or engaged in manual labour.

To obtain this summons, the plaintiff or some one in his employ, and with his authority, must make an affidavit for which the following form is given, but, as the reader will see, all the paragraphs will hardly ever be wanted together.

\* This means a demand which is not in the nature of damages but is fixed, as for an agreed price or hire, an agreed balance or rent.



**XXVII.—AFFIDAVIT OF DEBT, TO OBTAIN DEFAULT SUMMONS UNDER SEC. 88.**

In the County Court of  
holden at

I,  
of  
in the of (add occupation of  
deponent), make oath and say as follows :—

1. That  
of  
is justly and truly indebted to  
in the sum of pounds, shillings,  
and pence, for

2.\* That my [the Plaintiff's] claim is for the price [or value  
or hire] of Goods which or some part of which were sold or  
delivered [or let on hire] to the said  
to be used or dealt with in the way of his trade [or profession  
or calling] of a

3.† That I am a person in the employ of the said  
and that the facts herein deposed to are within my own know-  
ledge, and that I am duly authorised by  
to make this affidavit.

Sworn at

this day of  
189

Before me,

*A Commissioner to administer Oaths in the Supreme  
Court of Judicature in England.  
Filed on behalf of the Plaintiff.*

Where leave has to be obtained for issue of the sum-  
mons the following affidavit must be used :—

**XXVIIA.—AFFIDAVIT FOR LEAVE TO ISSUE ORDINARY OR  
DEFAULT SUMMONS OUT OF JURISDICTION.**

In the County Court of , holden at .

51 & 52 Vict., c. I,  
43, ss. 74, 86.  
Order V

make oath and say as follows :—

When demand is 1.—That  
a debt or liqui- of  
dated claim. in the of  
is justly and truly indebted to

\* To be struck out when the claim is over £5 0s. 0d.

† To be struck out where the plaintiff himself makes this affidavit.

or That claim to be entitled When claim is  
to recover from the sum of unliquidated.  
pounds, shillings, and pence  
damages for

or That the cause of Action in respect of which  
the said \_\_\_\_\_ is proposed to be sued When cause of  
arose wholly or in some material part at action or  
in the County of \_\_\_\_\_ within the jurisdiction material part  
of this Court. relied on as  
giving

3.—And I further say, that I am a person in the employ of the said \_\_\_\_\_ and that the facts herein deposed to are within my own knowledge, and that I am duly authorised by the said \_\_\_\_\_ to make this affidavit.

5.—And I further say that claim is To be added for the price [or value or hire] of goods which, or where a default some part of which, were sold and delivered [or let summons is on hire] to the said to be used or proposed to be dealt with in the way of h trade [or profession or issued and the calling] of a claim does not Sworn at the exceed £5.

**Filed on behalf of the Plaintiff.**

\* This clause need be used only when proposed Defendant does not reside or carry on his business within this Court's jurisdiction.

the defendant that, unless within eight days from the personal service of this summons, inclusive of the day of service, he returns to the Registrar (by post or otherwise) one of the notices printed on the summons, he will not be allowed to defend and that the plaintiff may, without further proof, proceed to judgment and execution.

There are two forms of notice at the foot of the summons; one denying the debt in part and the other altogether. On the back is a warning that, if the defendant means to avail himself of any of the special defences (see forms x to xix) he must at the same time also give notice of such special defence.

• If the notice of defence as to part is given, judgment may be signed for the other part. If no notice is returned, judgment may be signed for the whole at any time within two months after service. But if the defendant by affidavit explains his neglect to give notice by a statement which satisfies the judge or the registrar, and at the same time swears to facts which shew a good defence to the action, he may be let in to defend on terms.

To encourage the defendant to let judgment go by default, the plaintiff may, with the summons, give a notice that he will take payment by instalments, naming them, and will be bound by that notice.

The disadvantage of this summons is that it must be personally served. But if the plaintiff thinks it can be served by himself or some clerk or servant in his "permanent and exclusive employ" (or by some person in his solicitor's employ) he may make a request for this mode of service when he enters the case and gives his *præcipe*, or order, for the summons. When the service is effected by any one but the bailiff, the server must make an affidavit of the service, annexing a copy of the summons served, according to the form 21 in the collection appended to the County Court Rules.

15. Where the plaintiff sues for £10 or any larger sum up to £50 on a bill, cheque or promissory note, *within six calendar months after it falls due*, and chooses to take his remedy under "the Summary Procedure on Bills of Exchange Act, 1855" (18 and 19 Vict., c. 67),\*

\* This Act, though repealed generally by 46 & 47 Vict., c. 49, is kept in force as to County Courts by sec. 7 of the repealing Act, under which it continues to apply to those inferior Courts of civil jurisdiction to which, by Order in Council, it has been made applicable. It was made applicable to County Courts by Orders in Council of 30 January, 1856, and 27 July, 1863.

another kind of default summons is issued. It is obtained without an affidavit by the plaintiff; but the Court may require him to deposit the bill, cheque or note in the office and to give security for costs. (Sec. 4.)

The summons gives notice to the defendant that, *within twelve days* after the service—which must be personal—the plaintiff may proceed to judgment and execution; unless the defendant within the twelve days files an affidavit showing that he has a good defence, and obtains leave, from the Judge or Registrar, to defend the action.

A copy of the instrument and all its endorsements must be annexed to the summons; and on the back of the summons is a statement that the plaintiff claims £        for principal and interest, or balance of principal and interest, on the instrument and so much for noting and bank expenses and so much for Court fees and for solicitor's costs, if a solicitor is engaged.

The defendant is also informed that he may obtain leave to defend upon application at the Registrar's office supported by an affidavit shewing a defence to the action on the merits, or disclosing facts shewing that it is reasonable that the defendant should be allowed to defend.

By Order xxxv, rule 1, the defendant is required to file, with the affidavit, a copy thereof and to give security if required. This security may either be by bond according to County Court form 28, to be approved by the Registrar, or by deposit.

By sec. 3 of the Act of 1855 the Judge may, under special circumstances, set aside the judgment and stay execution and give leave to appear and defend on such terms as may seem just.

Until the Judge can hear the application, execution will be stayed on the defendant giving security (C. C. Rules, 1889, O. 35, R. 3).

Even in an ordinary action there are many other steps that may be taken; such as the discovery of documents, the administration of interrogatories, the answering them and the examination of witnesses before trial. There are also proceedings out of the common course, such as are mentioned in a note at the beginning of this Class. But I have mostly confined myself to such steps in one action as a man of intelligence may take for himself in simple cases without being a lawyer, and have put the signature of the party, and not of his solicitor, to the forms.

## CLASS IX.—CONVEYANCES.

1. WHEN one person sells land to another the first thing usually done is to sign a contract of sale. Now, a contract of sale in itself is a very simple thing. Thus, if I write to a man and say, "I will sell you Monk's Grange for five thousand pounds," and he writes back simply accepting my offer, he thereby becomes the purchaser of an estate in fee-simple in the land or—if he knows I have a less estate—of all the interest which I have in the land, including, of course, the timber on it, and all rights appurtenant to it. Under this contract I must show a forty years' title, which may involve the production of deeds, and the production of evidence of facts more than forty years old. Whatever deeds or other muniments I am bound to produce in order to prove my title, I must be prepared to hand over if they relate exclusively to the property sold, and, as regards those which I am entitled to keep, I must acknowledge the right of the purchaser, his heirs and assigns to their production at all times. I must also prove (as, for instance, by means of maps and evidence of possession, that the property to which the deeds relate is identical with, or inclusive of, the property which I have agreed to convey.

Again, if I agree, without any conditions, to sell copyhold property, I am bound to prove the title of the lord of the manor, as well as my own; and even if the tenement has been enfranchised, unless it was done under the general Enfranchisement Acts, I may have to offer proof of the same kind.

2. The first thing which the vendor has to do, after signing the contract of sale, is to furnish an abstract of his title to the purchaser. This sets out in an abridged form the deeds and other documents and the evidences of births, marriages and deaths on which the title depends. The commencement of this abstract is called the "root" of title, and it is not every deed that will serve for a root. Sometimes it is desirable in the contract to fix the instrument which is to serve as the

root ; though, if the instrument is more than forty years old and is a good root, this is unnecessary.\*

3. The purchaser is not entitled to require the production of any document dated before the time prescribed by law or before the agreed root of title or to require any information as to the earlier title ; and, when the documents produced recite such earlier documents, he is to assume the recitals to be correct, unless the contrary appears. (*Conveyancing Act*, 1881, s. 3 (3).)

The expense of producing any records or other documents of title not in the vendor's possession, and of all journeys for that purpose and of getting copies of, or extracts from, such documents and of searching for and examining certificates, evidences and information not in the vendor's possession must be borne by the purchaser requiring the same. And if the vendor retains any document and the purchaser requires a copy of it, he must pay for the copy. (*Ibid.*, s. 3 (6) )

4. Notwithstanding these legislative restrictions of the obligations once imposed on the vendor, it is usually prudent to qualify his contract to sell with some conditions. And this may be more important in the case of small properties than of large ones, lest the expenses of selling should exceed the price.

\* By the Vendor and Purchaser Act, 1874, the sixty years' title formerly required is changed into a forty years' title, *subject to any stipulations to the contrary in the contract*, and the following rules are given regulating the respective rights of vendor and purchaser, save so far as they may otherwise provide in the contract.

1. Under a contract to grant or assign a term of years, the person who is to take the lease is not entitled to evidence of the title to the freehold.

2. Recitals, statements, and descriptions contained in deeds, instruments, statutes or statutory declarations, twenty years old at the date of the contract, are to be taken as sufficient evidence, save so far as they are proved inaccurate.

3. Vendor's inability to furnish purchaser with a legal covenant to produce documents of title shall not be an objection to title where purchaser will, on completion, have an equitable right to the production of such documents.

4. Whatever covenant for production the purchaser is entitled to and requires, is to be furnished at his expense, and the vendor is to bear the expense of its perusal and execution.

5. Where the vendor retains any part of an estate to which any documents of title relate, he shall be entitled to retain such documents.

By the Conveyancing Act, 1881, sec. 13, where the man who agrees to grant a lease is himself the holder of a lease, the person who takes the underlease is not entitled to call for the title to the lease. And, by s. 3 (1), the purchaser of an underlease cannot demand the title of the lease out of which it is granted.

But the framing of those conditions is quite out of the power of a non-lawyer, and is a thing which only those lawyers who are experienced in conveyancing can do well.\* However, there are two kinds of contracts of sale which I may usefully give here, each of them requiring some variation, according to the nature of the property sold. The one fixes the price, the instrument with which the evidence of title is to begin, and the time for completion, and provides that trees are to be taken at a valuation. The other merely fixes the price, and provides for the sale of the trees; while all the rest of the conditions, both those relating to evidence of title and other matters, are left to be settled by a person named in the contract.

The first kind of contract is one which has the advantage of being complete in itself, and one which the Chancery Division would enforce if it were fair and capable of being carried out; but the selection of the instrument which is to serve as the root of title is a thing requiring the learning of a lawyer. The second kind of contract is one which, after it has been rendered complete by the framing of conditions, is more likely to suit the convenience of each party; but, until this duty is performed by the person employed for that purpose, the contract will not be enforced by the Court, because it is not complete without a proceeding in the nature of an arbitration.

I will now give the first kind of contract, with two variations, and then, in Forms iv., v. and vi., the second kind.

\* The conditions will vary according as the property is freehold, copyhold, or leasehold, or composed partly of one kind and partly of another. They will vary according as the land is subject or not to a right of mining, of way, of water, or to other rights impairing the full enjoyment of it by the purchaser; they will vary according as the land is in the occupation of a tenant under a lease or otherwise, according as the interest to be sold is an estate of inheritance, a life estate, an estate for years, or a reversion expectant on the determination of another estate. The conditions must also take into consideration the land-tax and tithe rent-charge and sewers-rate, if any. If the timber is not included in the price the valuation must be provided for. If a deposit is to be paid; if the title is to be deduced from a later period than the time fixed by the law; if there is to be a limit to the time allowed for raising and answering objections,—these things must be specially provided for.

## I. CONTRACT FOR SALE OF AN ESTATE IN FREE-SIMPLE.\*

Agreement made this       day of [*month and year*], between A. B., of       , and C. D., of       .

1. The said A. B. agrees to sell, and the said C. D. agrees to buy, the fee-simple estate in the freehold lands and messuages called Monk's Grange, in the parish of Dayton, being       acres, more or less, with the appurtenances,† at the price of £5000, whereof £500 is paid as a deposit at the signing hereof.

2. Trees of every kind, down to the value of one shilling a stick, shall be taken at a valuation.

3. The title shall begin with a conveyance by G. H. and another to J. K., dated on or about the       day of [*month and year*], and no prior title shall be inquired into. The abstract shall be delivered within 14 days and, subject to any requisitions or objections which the purchaser may make within 21 days of such delivery, he shall be deemed to have accepted the title; and, if the vendor is unable or unwilling to comply with any requisition or satisfy any objection which is insisted on, he may rescind this contract, returning the deposit money without interest, costs or compensation.

4. The purchase shall be completed on the       day of June next, in the forenoon, at the office of S. T., solicitor, at C., where the vendor [and all necessary parties‡] will execute the conveyance.

A. B.

C. D.

Received this       day of [*month and year*] the sum of £500, the deposit on this purchase.

A. B.

\* The stamp duty on this and the five following forms is 6d., which may be denoted by one or more adhesive stamps.

† If any portion is let on lease or otherwise, say so, thus:—  
“Whereof a portion, being 60 acres more or less, called the Home Farm, is in the occupation of J. S., whose tenancy expires the       day of [*month and year*],” or “is in the occupation of J. S., as tenant from year to year.”

‡ The words in brackets are to be inserted where the estate is mortgaged or an interest is outstanding in any person, so that the purchaser shall be satisfied with a conveyance in which the mortgagee or other person joins, instead of requiring the purchaser to get separate conveyances vesting the whole estate in himself before completion. Sometimes, when the land is incumbered, the following condition is added:

“The purchaser shall not require any incumbrance to be paid off anterior to the conveyance to him; but shall be satisfied if all necessary parties join in the conveyance, nor shall he make any claim for costs in reference thereto.”



## II. THE LIKE OF A COPYHOLD ESTATE OF INHERITANCE.

Agreement made this       day of [*month and year*], between A. B., of       , and C. D., of       .

1. The said A. B. agrees to sell, and the said C. D. agrees to buy, the estate of inheritance in possession in the lands called Moss End, in the parish of S., comprising 150 [customary\*] acres, more or less, parcel of the manor of Sherwood, whereof a part comprising 110 [customary] acres more or less, and known as the Moss Farm, is in the occupation of J. S. as tenant from year to year, and 40 acres more or less, known as the Lay Fields, is in the occupation of S. T., whose lease expires on the       day of [*month and year*].

2.† The title shall begin with a surrender by G. H. and another [*follow clause 3 of Form i.*].

3. The purchase shall be completed on the       day of June next, in the forenoon, at the office of the Steward of the Manor, when the vendor will surrender [and all necessary parties will join in surrendering‡]. The purchaser shall pay all the fines, fees, heriots, and expenses attendant upon surrender and admittance.

4. The title of the lord of the manor shall not be inquired into.§

5. The vendor shall not be required to identify the present description of the lands with the description in the Court rolls,|| nor with the former descriptions of any part of the estate.

A. B.

C. D.

## III. CONTRACT FOR SALE OF LEASEHOLDS.

Agreement made this       day of [*month and year*], between A. B., of       , and C. D., of       .

1. The said A. B. agrees to sell and the said C. D. agrees to buy the leasehold messuage and land called       , situate in the parish of       , being 100 acres more or less, and now in the occupation of the vendor and held under a lease granted by G. H., of       , dated on or about the       day of [*month and year*], at the price of £       , subject to the terms of the said lease and to the payment of the [apportioned¶] rent of £       per annum.

\* This is where there is a customary acre; but the statutory measurement may be used.

† The valuation of trees is omitted, as timber usually belongs to the lord of the manor. If this is not so, or there are trees which are not timber, insert the clause.

‡ See note to similar words in Form i.

§ Where the purchaser is not himself a copyholder of the manor, and is not its lord, this clause should be inserted.

|| The names and boundaries of places in the Court rolls often differ from the modern names and boundaries.

Omit this word if the rent is entire.

2. Tenant's fixtures, stock, crops, manure and acts of husbandry are to be paid for at a valuation to be made by E. F., of \_\_\_\_\_, at the joint expense of the said parties.

3. The abstract shall be delivered within 14 days, and, subject to any requisitions or objections which the purchaser may make within 21 days of such delivery, he shall be deemed to have accepted the title; and if the vendor is unable or unwilling to comply with any requisition or satisfy any objection which is insisted on, he may rescind this contract, returning the deposit without interest, costs or compensation.

4. The purchase shall be completed on the \_\_\_\_\_ day of June next, in the forenoon, at the office of S. T., solicitor, at C., when the vendor [and all necessary parties\*] will execute the assignment.†

A. B.

C. D.

#### ‡IV. ANOTHER FORM OF CONTRACT FOR SALE OF AN ESTATE IN FEE-SIMPLE.

Agreement made this \_\_\_\_\_ day of [month and year], between A. B., of \_\_\_\_\_, and C. D., of \_\_\_\_\_.

1. The said A. B. agrees to sell, and the said C. D. agrees to buy, the freehold, messuages and lands, called Monk's Grange, in the parish of Dayton, being \_\_\_\_\_ acres more or less, with the appurtenances,§ at the price of £ \_\_\_\_\_, subject to the conditions hereinafter provided for.

2. Trees of every kind, down to the value of one shilling a stick, are to be taken at a valuation.

3. The conditions of sale shall be settled to meet the interests of both parties, at their joint expense, by || Mr. E. F., of \_\_\_\_\_, solicitor, or some counsel to be consulted by him.

4. Such conditions may provide for payment of part of the said price by way of deposit, the taking of the said valuation, and the reduction of price by reason ¶ of any misdescription or concealment¶ not amounting to fraud, as well as for other matters usually provided for in conditions of sale.

A. B.

C. D.

\* See note on similar words in Form i.

† The purchaser is not entitled to inquire into the right of the landlord (G. H.) to grant the lease, and, on production of a receipt for the last rent due before the *actual* completion of the purchase, must assume that all the covenants have been performed, unless the contrary appears.

‡ For the stamp duty, see "*Stamps*," and note to Form i.

§ If the land is let from year to year, say so, and if let for a term, say when it ends.

|| It is by no means recommended that the parties should employ the same solicitor, except for the purpose of preparing the conditions. The gentleman named for that purpose should not be the usual adviser of either, or the person who is afterwards to act for either in the sale.

¶ As, for instance, if the land were subject to a right of way not

### V. ANOTHER FORM OF CONTRACT FOR SALE OF A COPYHOLD ESTATE OF INHERITANCE.

Agreement made this       day of [*month and year*], between A. B., of       , and C. D., of       .

1. The said A. B. agrees to sell, and the said C. D. agrees to buy, the copyhold messuages and lands called Moss End, in the parish of S., parcel of the manor of Sherwood, being       acres more or less, at the price of £       , subject to the conditions hereinafter provided for.

[*Go on as in Form iv, omitting clause 2 if the trees are all timber and timber belongs to the lord.*]

A. B.

C. D.

### VI. ANOTHER FORM OF CONTRACT FOR SALE OF LEASEHOLDS.

Agreement made this       day of [*month and year*], between A. B., of       , and C. D., of       .

1. The said A. B. agrees to sell, and the said C. D. agrees to buy, the leasehold messuage and lands called       , in the parish of       , being       acres more or less, and now in the occupation of X. Y., as tenant from year to year [*or as the case may be*], and held under a lease granted by G. H., of       , dated on or about the       day of [*month and year*], at the price of £       , subject to the terms of the said lease, and to the payment of the [*apportioned\**] rent of £       per annum.

2. The sale is subject to the conditions hereinafter provided for.

[*Go on as in Form iv, omitting the 2nd clause.*]

A. B.

C. D.

5. I will now give the forms of conveyances of freeholds in fee-simple and of leaseholds, and of a covenant to surrender copyholds.† This is not done with a view of making the non-lawyer his own conveyancer, but to

apparent, or a small portion were copyhold, or a right of mining had been granted under a small portion, but did not interfere with the enjoyment. It often happens that these things are not specified from inadvertence, and in such case the Court of Chancery will usually require an abatement of the price.\* The above words enable the person who prepares the conditions to make the proper modifications.

\* Omit this word if the rent is entire.

† Copyholds are conveyed in a particular manner, of which we cannot treat here. The deed executed on the sale is a covenant on the part of the vendor to surrender to the purchaser; but the actual conveyance is the surrender by the vendor to the lord of the manor and the granting again of the lands by the lord to the purchaser, memorials of which transactions are entered on the rolls of the manor. Copies of these are delivered out to the purchasers, and thus the land is said to be held by copy of court-roll, whence the name *copyhold*.

familiarise him with the simpler forms of instruments used for passing these sorts of property.

But first I ought to state, in regard to these deeds and nearly all others, (1) that they must be written on paper or parchment; (2) that the conveying party and every covenanting party should sign them,\* and put his finger on the seal or wafer set opposite his name, saying, "I deliver this as my deed," or words to that effect; (3) that *as a general rule*, deeds are valid, though there be no witness to the execution of them.

Conveyances of land in Middlesex should be attested by at least one witness, because the memorial which has to be registered is to be attested and sworn to by witness who is "where practicable" to be a witness to the conveyance itself. (*Land Registry Middlesex Deeds Act*, 1891.) If the land is in Yorkshire, there should be one witness for the purpose of the memorial, but, instead of a memorial, the deed may be registered at full length. *Yorkshire Registries Act*, 1884, secs. 5, 6.)

And (4) that they cannot be given in evidence unless they are stamped. But the stamp can be affixed to the following conveyances at any time within thirty days after their first execution without penalty, and at any time afterwards on payment of a penalty of £10, and when the duty exceeds £10 interest thereon. See "Conveyance on Sale" in the chapter on stamps.

6. The reader, if familiar with the prolixity of most of the conveyances made before 1882, will be struck with the brevity of the forms which follow; but he must not conclude that they are, on that account, imperfect. The abridgment is due to the legislature, and is effected chiefly in three ways.

It had been the practice to set out in a conveyance of land all sorts of easements and rights which might belong to it, such as commons, ditches, fences, ways, water-courses, etc., generally known by the term "appurtenances," and also to name certain things which were really parts of the land, such as buildings, cellars, courtyards, etc. Now the conveyance of land is made to imply the mention of all these things, many of which need never have been mentioned at all.

The words "in fee simple," "in tail," etc., are made to do duty for the old, and more numerous, words of time-section, and—what saves more writing still—the covenants are altogether omitted. Before 1882, covenants

\* But some one else may sign for the party in his presence or may guide his hand. [*See Forms of Attestation in Class XII.*]

were inserted at length, varying in character according to the capacity in which the person conveyed; differing according as he was selling as absolute owner, trustee or mortgagee or was making a voluntary settlement. But since 1882 the words expressing the capacity in which the conveying party conveys are made to imply all the covenants (such as for title, against incumbrances for further assurance, etc.) as would be suitable in a conveyance by a person so acting. Thus, "as beneficial owner," "as trustee," "as mortgagee," "as settlor" are made by the Conveyancing Act of 1881 to supply the place of so much writing, which is set out in the statute instead of in the deed.

#### VII. CONVEYANCE OF FREEHOLDS IN FREE-SIMPLE.

This Indenture, made the            day of [*month and year*], between A. B., of           , esquire, of the one part, and C. D., of           , yeoman, of the other part, Witnesseth as follows:

In consideration of £200 paid on the execution hereof by the said C. D. to the said A. B. (the receipt whereof the said A. B. acknowledges) the said A. B. *as beneficial owner* conveys unto the said C. D., to hold unto and to the use of the said C. D. in fee-simple the premises described in the Schedule hereto, with their legal and usual appurtenances.

In Witness whereof the parties hereto have hereto set their hands and seals the day and year first above written.

A. B. [*Seal.*]

C. D. [*Seal.*]

Signed, sealed, etc. [*follow one of the forms of attestation in Class XII.*].

#### SCHEDULE.

All that messuage or farmhouse, buildings and several closes of land called Monk's Grange, situate at           , in the county of           , bounded on the N.W. and N.E. by land of Lord S., on the S.W. by the York Road, and on the S.E. by Hillsborough Common, and comprising as follows:

Name.	Description.	Contents A. R. P.	Occupation.
Home Close .....	Pasture		} The Vendor.
Orchard.....			
Garden .....			
Brick Field Close	Pasture		
East Marl Field .	Arable		
West Marl Field.	Arable		

A. B.  
C. D.

7. If the purchaser, who prepares his conveyance, or has it done by his lawyer, desires that his widow's right to dower out of the purchased lands should be barred, a few words can be introduced for that purpose. Dower is the widow's third of her husband's lands to be enjoyed for her life. If the husband sells or mortgages the land, or devises it by his will, this right does not arise, and the husband can always bar it, not only by any of these means but by any deed in which he declares it to be barred. It is therefore only where the husband has not barred the dower and has allowed the land to *descend* to his heir that the widow has the right at all, and there can be no reason for depriving her of her dower in favour of her child or step-child; still less in favour of a more remote heir of her husband. In spite of this, however, after the Act of 1833, which authorised a declaration to bar dower, it became the practice to insert such a declaration in every purchase deed. If such a thing is desired, insert as paragraph 2 of the above deed a

#### VIII. DECLARATION TO BAR DOWER.

It is declared that no widow of the said C. D. shall be dowerable out of the premises.

8. Upon executing the purchase deed last above given the vendor will hand over all the title-deeds which belong exclusively to the property sold; but if there are any documents of title which belong to property which the vendor retains, he will acknowledge the purchaser's right to their production as follows:

#### IX. CONVEYANCE IN FEE-SIMPLE WHERE VENDOR KEEPS THE TITLE-DEEDS.

[*Follow the conveyance numbered vii. down to the end of paragraph 1, inserting "first" before "Schedule," and then proceed.*]

2. The said A. B. hereby acknowledges the right of the said C. D. to production of the documents of title mentioned in the 2nd Schedule hereto and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

In witness whereof, etc. [*follow witnessing clause, execution and attestation, as in*

#### SCHEDULE I.

[*Follow Schedule of Form.*]

## SCHEDULE II.

1 June, 18—.—Indenture between W. B., of the first part, S. J., of the second part, and X. and Y., trustees, of the third part, being the settlement on the marriage of the said A. B. and S. his wife.

3 May, 18—.—Indenture between the said Y. of the one part and the said A. B. of the other part, whereby Y., as surviving trustee of the said settlement, conveys to the said A. B., as the only son of W. B. and S. his wife, both deceased.

A. B.

C. D.

Witness E. F.

[*Residence and occupation.*]

\*X. COVENANT TO SURRENDER COPYHOLDS TO A PURCHASER.

This Indenture, made the            day of [*month and year*] between A. B., of           , of the one part, and C. D., of           , of the other part, Witnesseth as follows:—

The said A. B., in consideration of £            † paid to him by the said C. D. (the receipt whereof the said A. B. acknowledges) as *beneficial owner* covenants with the said C. D. that he, the said A. B., or his heirs and all other necessary parties (if any), will forthwith, at the cost of the said C. D., his heirs and assigns, surrender the hereditaments described in the schedule hereto into the hands of the lord of the manor of Sherwood. To the use of the said C. D., his heirs and assigns, according to the custom of the said manor.

In witness, etc. [*follow the clause as in Form vii*].

THE SCHEDULE.

[*Set out the closes with acreage and occupation, with map if necessary, and, if they are otherwise described in the Court rolls of the manor, say "which premises are thus described on the Court rolls of the manor;" and then give them as so described.*]

†XI. ASSIGNMENT OF A LEASEHOLD ON A SALE BY THE LESSEE.

This Indenture, made the            day of [*month and year*], between A. B., of           , of the one part, and C. D., of           , of the other part, Witnesseth as follows:—

\* This instrument, which is to be kept by the purchaser, is usually executed immediately before vendor surrenders the sold tenement into the hands of the lord. The surrender itself will have been prepared by the steward of the manor, and engrossed on parchment like the rest of the rolls of the Court, and the purchaser will have a copy of it and of the admittance.

† The full purchase-money.

‡ This must be executed in duplicate, because of the covenant for indemnity, and the lessee must keep the deed executed by the person to whom he assigns.

1. The said A. B., in consideration of £        paid to him by the said C. D. (the receipt whereof the said A. B. acknowledges), *as beneficial owner* assigns unto the said C. D., his executors and administrators, the premises described in the schedule hereto, with their legal or usual appurtenances, during the subsisting residue of the term of        years created by a lease dated the        day of [*month and year*], from G. H., of        , to the said A. B.

2. The said C. D. covenants with the said A. B. that he, the said C. D., his heirs, executors, administrators, or assigns, will discharge and keep the said A. B., his heirs, executors and administrators, indemnified against all liabilities under the said lease subsequent to the date of these presents.

#### THE SCHEDULE.

[*Describe the premises as in the Lease.*]

In Witness whereof the parties hereto have hereto set their hands and seals the day and year first above written.

A. B. [*Seal.*]

C. D. [*Seal.*]

Signed, sealed etc. [*follow one of the forms of attestation in Class*

#### \*XII. THE LIKE WHERE THE VENDOR IS NOT THE ORIGINAL LESSEE.

[*Follow the last preceding form down to and including the words "from G. H., of        ,"* and then proceed] to X. Y.,† and now by mesne assignments and operations of law vested in the said A. B.

2. The said C. D. covenants with the said A. B. that he, the said C. D., his heirs, executors, administrators or assigns, will discharge and keep the said A. B., his heirs, executors and administrators, indemnified against all liabilities under the said lease subsequent to the date of these presents.

#### THE SCHEDULE.

[*As in the last preceding form.*]

In witness, etc. [*as in the last preceding form*].

A. B. [*Seal.*]

C. D. [*Seal.*]

Signed, sealed etc. [*follow one of the forms of attestation in Class XII*].

\* This must be executed in duplicate, for the reason mentioned in the note to the last preceding form, and the assignor must keep the deed executed by the person to whom he assigns.

† The original lessee.



### \*EQUITABLE MORTGAGE.

9. The effect of a mortgage may be produced by depositing the title-deeds of real property, or a material portion of them, to secure a debt, even though no written memorandum of the transaction were made. This is called an *equitable mortgage*, because the Courts of Equity (*i. e.* the Chancery Division and the County Courts in their equitable jurisdiction) will consider the land as pledged for the debt, and will decree a preclosure on its being claimed by the person with whom the deeds are deposited.

\* If, therefore, you desire to obtain a security for a past debt or a present advance, you may take a deposit of your debtor's title-deeds, or a material portion of them.† But to make the matter perfectly clear a memorandum like the following should be entered into

#### XIII. MEMORANDUM OF DEPOSIT OF TITLE-DEEDS.

Memorandum.—The muniments of title to the property called the Reeve's Close, specified in the Schedule hereto, have been deposited by A. B., of \_\_\_\_\_, with C. D., of \_\_\_\_\_, to secure £\_\_\_\_\_ advanced to the said C. D., with interest at £\_\_\_\_\_ per cent. per annum. Dated this \_\_\_\_\_ day of [*month and year*].  
A. B.

#### SCHEDULE.‡

If the creditor is to be entitled to a legal, as distinguished from an equitable, mortgage, a clause to that effect should be added. If there is to be no power of sale, the agreement must expressly say so. The following may be the form:—

\* The other forms of mortgage are numerous and lengthy. They are omitted here because circumstances hardly ever require the non-lawyer to use them for himself, and the lawyer will find them in great abundance in books with which he is familiar.

† The lender must try to get the last conveyance if possible, because otherwise that may have been deposited already, or may be afterwards deposited, with some one else, and there may be a question as to the rights of that person.

‡ Here state the deeds by the dates and parties, and the other documents, and let A. B. sign the schedule.

## XIV. THE LIKE WITH AGREEMENT FOR AN ACTUAL MORTGAGE.

[*Follow the preceding form down to "per annum," and then go on as follows.*]

The said A. B. undertakes, on demand, to execute to the said C. D., his executors or administrators, or as he or they may direct, a legal mortgage of the premises,\* and to pay all costs, charges and expenses of preparing, completing, and incidental to the said mortgage.

Dated this            day of [*month and year*].

A. B.

SCHEDULE.†

## DECLARATION OF TRUST. •

10. This is an instrument whereby the person who executes it declares himself to be a trustee of certain property for another. A declaration of trust is applicable to property of every kind; and a man may be so situated in respect of property as to find it the only convenient form of disposition. Where one person has property which he wishes to acknowledge to be the property of another, a declaration of trust is well suited for effecting his object. Owing to the infancy of the person to be benefited or the number or variety of investments, any other form of conveyance may be impracticable. For example, the property represented by a bond, policy of insurance, or deposit receipt can be made to pass by means of a few words indorsed or underwritten without a formal assignment or even attestation. (See Form xv and those that follow it.) Again, suppose a man possessed of large real and personal property, consisting of estates of inheritance, freehold and copyhold, estates for life, and leasehold, some parts of which are in possession and others in remainder and consisting also of funded stock, shares, securities and money at a bank: by means of two lines signed by himself, he may transfer the whole or any part of this property to another. [*See Form xv.*] If he desires that several shall take the property, some for life and others on the death of the former, a few more lines of writing will effectuate the gift. This instrument is of great use when a man is dying, because it is brief and requires no seal and no witness, and is

\* If there is to be no power of sale, say here "without a power of sale," otherwise the mortgage will confer that power by virtue of the Conveyancing Act, 1881, secs. 19 and 20.

† Here state the deeds by the dates and parties, and the other documents, and let A. B. sign the schedule.

equally valid though a will has been made. It should be remembered, however, that the gift is irrevocable when once made, though the instrument never leaves the possession of him who makes it, nay, though he destroy it, so long as any evidence remains of it.

#### XV. GENERAL FORM OF DECLARATION OF TRUST IN FAVOUR OF ONE ABSOLUTELY.

I, A. B., of \_\_\_\_\_, declare that I hold all the property comprised in the following schedule, in trust for C. D., of \_\_\_\_\_, absolutely. Dated the \_\_\_\_\_ day of [*month and year*].  
A. B.

\*Signed in the presence of

e

G. H.

#### SCHEDULE.

My lands called the Limekilns, in the parish of \_\_\_\_\_, in the county of \_\_\_\_\_.

My reversion or remainder in the lands called Land's End, in the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, expectant on the death of John Doe.

My twenty shares numbered 501-520, in the Taff Vale Iron Company.

A. B.

Whenever you wish to assign, either by way of gift or security, property which is not transferable by delivery, as a bond, policy of insurance or a share in a joint-stock company, the safest way is not to attempt to prepare a legal assignment, but to make yourself a trustee of the property for the person to whom you propose to give it. The following form may, in such a case, be indorsed on the instrument the benefit of which you wish to assign:—

#### XVI. DECLARATION OF TRUST TO BE INDORSED ON A TITLE-DEED.

I declare that I hold the property comprised in the within †deed in trust for C. D. Dated the \_\_\_\_\_ day of [*month and year*].

#### XVII. DECLARATION OF TRUST OF SHARE OF A DECEASED'S ESTATE.

I declare that I hold my share of the estate of my deceased brother Oliver upon trust for C. D. Dated this \_\_\_\_\_ day of [*month and year*].

A. B.

\* But a witness is not necessary, though desirable; nor need there be any sealing or delivery, for it need not be a deed.

† If not a deed, say "instrument."

## XVIII. DECLARATION OF TRUST OF A DEPOSIT IN A BANK.\*

I declare that I hold the money represented by the within deposit receipt in trust for C. D. Dated this            day of [month and year].

A. B.

## XIX. ASSIGNMENT FOR VALUE OF GOODWILL, STOCK, AND BOOK DEBTS.

This Indenture, made the            day of [month and year], between A. B., of           , tailor, of the one part, and C. D., of           , tailor, of the other part, Witnesseth as follows:

1. The said A. B., in consideration of £            paid to him by the said C. D. (the receipt whereof as purchase-money is hereby acknowledged), *as beneficial owner*† assigns unto the said C. D. the goodwill of the business of a tailor carried on by the said A. B. at            street, in the City of           , together with the book and other debts and stock-in-trade‡ of the said business specified under their respective headings in the first schedule hereto.

2. The said A. B. covenants with the said C. D., his executors, administrators, and assigns, that he, the said A. B., and every person claiming under or in trust for him, will, at the cost of the said C. D., his executors, administrators or assigns, do and suffer all things required for introducing him and them to the customers of the said A. B. And that the said A. B. will not directly or indirectly carry on, be concerned or engaged in or permit his name to be used by any person or company for the business of a tailor at any place within            miles of the Town Hall of the City of            aforesaid.

3. The said C. D. covenants with the said A. B., his executors and administrators, that he, the said C. D., will discharge and keep the said A. B. and his estate indemnified against the liabilities specified in the second schedule hereto; but so that this covenant shall not be enforced so long as the said A. B. and his estate are kept so indemnified.

In Witness whereof the parties hereto have hereto set their hands and seals the day and year first above written.

A. B. [Seal.]

C. D. [Seal.]

Signed, sealed, etc. [follow one of the forms of attestation given in Class XII].

\* To be indorsed on the deposit receipt.

† The words in italics imply the necessary covenants for right to assign and further assurance. (*Conveyancing Act*, 1881, s. 2 [i and v], and s. 7.)

‡ If the vendor of the business has a lease of the business premises, or a larger interest in them, they should be assigned by a separate instrument.

## THE FIRST SCHEDULE.

*Book and other Debts.  
Stock-in-Trade.*

## THE SECOND SCHEDULE.

*[Insert liabilities.]*

A. B.  
C. D.

Witness E. F.  
*[Residence and occupation.]*

\*XX. ASSIGNMENT OF LIFE POLICY FOR VALUE BY  
INDORSEMENT.

I, A. B., of , in consideration of £100, do hereby assign unto C. D., of , his executors, administrators and assigns, the within policy of Assurance for £200 upon my life, granted by the Union Assurance Company the day of *[month and year]*, and numbered , and all present and future bonuses and benefits thereunder.

In Witness whereof I have hereto set my hand† this day of *[month and year]*.

Signed and delivered by the said

A. B. in the presence of me,  
E. F.

A. B.

*[residence and occupation].* ]

Received of the said C. D. the sum of £100, being the consideration above mentioned.

A. B.

Witness E. F.

XXI. VOLUNTARY ASSIGNMENT‡ OF LIFE POLICY TO WIFE.

I, A. B., of , in consideration of the natural love and affection which I bear to my wife C. B., and of the payment by her of the future premiums, do hereby assign unto my said

\* This and the following form are under the Policies of Assurance Act, 1867, and require a written notice of their date and purport to be given to the Company at its principal place of business, as in Form xxv in Class II. If the assignment is not by indorsement, but separate, omit the word "within."

† A seal is not necessary, but, if it is intended to make the instrument a deed, insert "and seal" after "hand," and "sealed" after "signed" in the attestation.

‡ By sec. 47 of the Bankruptcy Act, 1883, if within two years after the date of any voluntary conveyance the conveying party becomes bankrupt, or what the Act makes equivalent to bankrupt, the conveyance will be void against the trustee in bankruptcy, and, if the bankruptcy happens within ten years, the conveyance will be void against the trustee unless the persons claiming under it prove that the bankrupt, when he made the conveyance, could pay all his debts without the aid of the property conveyed.

wife C. B., her executors, administrators and assigns, the within policy for £200 upon my life granted by the Assurance Society the day of *[month and year]*, and numbered , and all present and future bonuses and benefits thereunder. And as to any interest in the said policy which is not hereby effectually assigned, I declare myself a trustee thereof for my said wife, her executors, administrators and assigns. In Witness whereof I have hereto set my hand this day of *[month and year]*.

Signed and delivered by the said

A. B. in the presence of me,

E. F.

*[residence and occupation].*]

### ABSOLUTE BILLS OF SALE.

11. These instruments are dealt with here because, unlike the conditional bills of sale comprised in Class II, they are not redeemable securities but absolute conveyances. They are controlled by the Act of 1878, by sec. 10 of which every such bill is required to be attested by a solicitor who is to explain its effect to the grantor before execution, and to state in his attestation that he has done so. Seven days are allowed for its registration (see Class II), which is effected by producing to the Registrar the original duly stamped and filing a copy with the affidavit as to execution, &c. (See Class II, Forms viii—x.)

The conveyance of the chattels being absolute, the grantee may, as between himself and the grantor, take possession of them at any time; but if the grantor has given another bill of sale of the same chattels which is registered first, it will have priority. (Sec. 10.)

If, during the seven days and before registration, the grantor is adjudicated bankrupt, the bill of sale is protected, and so it is if the bankruptcy happens after registration. Within the seven days and afterwards, if registered, the bill of sale will be good against the grantor's execution creditors.

But an absolute bill of sale may be void as against the grantor's creditors by virtue of the Bankruptcy Act, 1883, which cannot be fully explained here. It is enough to say that if the grantor becomes bankrupt within three months of the execution of the bill of sale, it will be void against creditors in the following cases:—

(1) If it is given with the intention of fraudulent preference;

(2) If it is an assignment of the whole of the grantor's property for a past debt or for a greatly insufficient price;

(3) If it is made by a trader and conveys away so much of his property that it will disable him in his trade.

## XXII. ABSOLUTE BILL OF SALE.

Know all men by these presents that I, A. B., of \_\_\_\_\_, in consideration\* of £50 now paid to me by C. D., of \_\_\_\_\_, the receipt whereof I hereby acknowledge, *as beneficial owner*† convey to the said C. D. All the furniture and household effects in and about the tenement occupied by me at \_\_\_\_\_ aforesaid, and which are specifically described in the schedule‡ hereunder written.

### THE SCHEDULE.

[*Here describe the articles in the way in which a person whose business it is to describe them would do so.*]

In Witness whereof I have hereto set my hand and seal this day of [*month and year*].

A. B. [*Seal*].

Signed, sealed and delivered by the within-named A. B. in the presence of me, the undersigned J. S., of No. 1, Gallows Gate, in the City of York, a solicitor of the Supreme Court, who before the execution hereof by the said A. B. explained to him the effect hereof.§

J. S.

Received the sum of £50, the consideration above mentioned.

A. B.

12. In the body of the bill of sale the nature of the articles to be conveyed should be described generally, as

All the crops of \_\_\_\_\_ and other crops now growing upon the lands known as Pond End, near \_\_\_\_\_, in the county of \_\_\_\_\_, being 100 acres or thereabouts, in the occupation of the said A. B., and which are specifically described in the Schedule hereto.

\* The consideration need not amount to £30, as it must do in bills of sale given as securities for money (see Class II), which are governed by the Act of 1882.

† These words, by force of the Conveyancing and Law of Property Act, 1881, s. 7A, imply covenants for right to convey quiet enjoyment, freedom from incumbrances, and further assurance, which are, therefore, omitted.

‡ A Schedule is usually convenient, but is not necessary, as it is in bills of sale given as securities for money. If the articles are few, they can be described in the body of the document.

§ The affidavit for the registration of this bill of sale must depose to its being explained before execution as well as to the other facts required to be established, and may be in the form of affidavit by a solicitor given in Class II, Form xii.

All the trade machinery, plant and implements of trade now upon the premises occupied by the said A. B., and known as the Imperial Saw Mills, in        Street in the Borough of Southwark, and which are specifically described in the Schedule hereto. \*And also all trade machinery, plant and implements of trade which shall be brought on the same premises in substitution for or in addition to the articles hereby assigned or any of them.

All the book debts now due or coming due to the said A. B. in his business of a        , and which are specifically, etc.

### POWER OF ATTORNEY.

13. A power of attorney is an instrument by which you empower another to act in your name. If it is not given for value and contains no provision for its duration, it may be revoked by a deed of revocation, or, if not under seal, by a merely written or a merely verbal revocation. It will be revoked by your death, lunacy or bankruptcy and, in general, by your doing any of the acts for yourself which you have empowered your attorney to do for you. If, however, the power is given to your attorney for value, as, for instance, by way of security or as incidental to property or rights which you have transferred to him, it is irrevocable.

The person who gives a power of attorney is called the "donor," and the person authorised to act under it is called the "donee," or the "attorney."

A married woman, whether an infant or not, may, as if she were of full age and unmarried, appoint an attorney by deed to do any act or execute any deed which she might herself do or execute (*Conveyancing Act*, 1881, s. 40). But if the deed is of a sort which requires her to "acknowledge" it after a separate examination before a commissioner, she cannot appoint an attorney to execute it.

If the donee does any act or makes any payment in good faith in pursuance of the power and it turns out that, without the donee knowing it, the donor had previously revoked the power, or had died, or had become lunatic or of unsound mind, or bankrupt, the donee does not thereby become liable for what he has done. (*Conveyancing Act*, 1881, s. 47.)

If the power of attorney is given for valuable consideration and is expressed on its face to be irrevocable,

\* After-acquired property may be conveyed by an absolute bill of sale.



and a person agrees to buy, to lend money or to take a lease or otherwise deals for value under the power, the power cannot be revoked by the donor without the consent of the donee, nor by the donor's death, marriage,\* lunacy, unsoundness of mind or bankruptcy. And the acts done by the donee will be valid notwithstanding the donor's attempted revocation or the happening of any of the events mentioned. (*Conveyancing Act, 1882, secs. 1, 8.*)

If the power of attorney, whether given for valuable consideration or not, is expressed on its face to be irrevocable for a specified time, not exceeding a year from its date, then, in favour of a person dealing as above mentioned, it will be irrevocable for the specified time notwithstanding an attempted revocation or the happening of any of the events referred to in the preceding paragraph. And the acts done by the donee under the power are to be valid notwithstanding such act or any such event. (*Ibid.*, s. 9.)

A power of attorney the execution of which is verified by affidavit, statutory declaration or other evidence, may be deposited, together with the verifying instrument, in the Central Office of the Supreme Court. The file of these documents may be searched and copies may be made and stamped as office copies and may then be given in evidence instead of the original. (*Ibid.*, s. 48.)

A power of attorney usually authorises the donee to do acts and execute instruments for the donor in the donor's name; but the donee may, if he thinks fit, "execute or do any assurance, instrument or thing in and with his own name and signature and his own seal where sealing is required," and this will be equally effectual. (*Ibid.*, s. 46.)

The following is an authority to execute a deed :—

### XXIII. POWER OF ATTORNEY TO EXECUTE COMPOSITION DEED AND RECEIVE COMPOSITION.

I, A. B., of \_\_\_\_\_, by these presents appoint C. D., of \_\_\_\_\_, my attorney, for me and in my name to execute a certain Indenture dated the \_\_\_\_\_ day of [month and year], and† expressed to be made between E. F., of the first part, G. H., of the second part, and me, A. B., and the several other creditors of the said E. F., of the third part, and to demand and receive

\* This applied to a female before the Married Woman's Property Act, 1882, but is of little importance since that Act.

† Describe the deed by the date and the parties and, if necessary, the objects. The deed here described is a debtor and creditor deed and the subsequent language is applicable to it alone.

for me and in my name all moneys payable to me under the said Indenture, and to do all acts that may be necessary for receiving and recovering such moneys, and on payment or recovery of the same to execute all instruments that may be requisite for releasing or acknowledging the same.

And I undertake to ratify the execution of the said Indenture and all other legal acts done by my said attorney in the premises by virtue of these presents. In Witness whereof I have hereunto set my hand and seal this                      day of [*month and*

A. B.

Signed, sealed and delivered in the presence of

J. K.

[*Residence and occupation.*]

#### XXIV. POWER OF ATTORNEY TO RECEIVE DEBTS AND DISTREIN FOR RENT. •

I, A. B., of                      , hereby appoint C. D., of                      , my attorney for me, and in my name to do and suffer as follows:—

1. To receive, sue for, and recover all sums of money due or coming due to me, or which my said attorney may think to be so due or coming due. •

2. For the purposes above mentioned to institute or take part in legal and bankruptcy proceedings, to submit to arbitration, settle and compound for any debt or claim and to receive part thereof, and to execute any deed of composition, letter of license, or other instrument relating thereto.

3. To distrein for rent in arrear.

4. In his discretion to allow any just deduction from or set-off against any of such sums of money.

5. To pay, satisfy, settle, compound, or pay less for any debt due or which my said attorney may think to be due from me, and any claim in respect of money or personal property that may be made against me. •

6. For the purposes above mentioned to execute all such receipts, discharges, releases, transfers, assurances, acknowledgments or other instruments as may be requisite, usual or convenient.

7. And from time to time to appoint any attorney or attorneys under him for any of the purposes above mentioned, and to revoke such appointments.

8. This power of attorney shall be irrevocable for  
\*months from its date. •

In Witness whereof I have hereto set my hand and seal this  
day of [*month and year*].

A. B. [*Seal.*]

Signed, sealed, etc. [*follow one of the forms of attestation given in Class XII*].

E. F.

[*Residence and occupation.*]

\* Not more than a year.

The following is a form of power of attorney by a person going abroad giving ample powers for the management of his affairs during his absence, but not authorising a sale or mortgage. Caution is required in the choice of the person who is to receive authority so extensive.

XXV. POWER OF ATTORNEY BY ONE GOING ABROAD.

I, A. B., of                   , being about to go to Canada, hereby appoint C. D., of                   , my attorney in every place but Canada,\* for me and in my name to do and suffer as follows:—

1. To make and enforce claims in respect of all moneys and other property and all interests now belonging or hereafter to belong to me, or which my said attorney may think so to belong in respect of any real or personal property, and all other claims whatsoever.

2. To submit to arbitration, compromise, settle, compound or take less for any such claims.

3. To pay, satisfy and comply with any pecuniary, proprietary or other claims that may be made against me, whether capable of being legally established or not.

4. To submit to arbitration, compromise, settle, compound or give less for any such claims.

5. To institute or become party to any legal proceedings, whether by petition or otherwise, by me or at my instance; to join or concur in any legal proceedings by others representing my interests, or which shall be thought beneficial to my interests, and to become party to and defend any proceedings against me or adverse to my interests, and to become party to any reference to arbitration.

6. To take possession of, deal with and manage my real estate as effectually as I might myself do, and in particular to cultivate my lands or let them or any part of them to tenants, to cut trees and other wood for sale or repairs, to build, pull down and repair buildings, to insure buildings and other property against injury, to arrange with tenants and make allowances to them, to accept surrenders from them or evict them, and to distrein for rent and services.

7. To deal with and manage my personal property as effectually as I might myself do, and in particular to execute transfers of my shares in corporations, to vote for me where permissible at any meetings of such corporations or of any of the members thereof, and to appoint proxies to vote for me at any of such meetings, and to receive for me all shares, stocks, funds, interest, bonuses, and other money and things now or at any time payable to me by any corporation.

8. To invest any moneys of mine in any of the public or

\* It is very important to state in what part of the world the attorney hereby appointed may act, since otherwise it might be a question whether he could even act in Scotland or Ireland.

parliamentary funds or stocks, or in Government or real securities in England and Wales, and from time to time to vary such investments, and, pending investment, to deposit the said money in any bank.

9. In the execution of any of the powers hereby conferred to execute or sign any deed or other instrument in writing, and in particular on recovering or receiving money or other property or receiving the rendition, assurance, satisfaction or acknowledgment of any right or interest in my favor and upon paying, rendering, assuring satisfying or acknowledging any money, claim, right or interest adverse to me to give or execute such receipts, discharges, releases, assurances and acknowledgments as may be requisite, usual or convenient.

10. Generally to do, execute and suffer every such other act, deed, writing, matter and thing for me and in my name as the said C. D. may think necessary or expedient in execution of the powers hereby conferred and in and about my concerns.

11. From time to time to appoint any attorney or attorneys under him, and to revoke such appointments.\*

12. No specification of any particulars herein shall affect the generality of any powers hereby conferred.

13. This power of attorney<sup>†</sup> shall be irrevocable for a year from its date.†

In Witness whereof I have hereto set my hand and seal this day of [*month and year*].

A. B. [*Seal.*]

Signed, sealed, etc. [*follow one of the forms of attestation given in Class XII*].

#### XXVI. A LIKE FORM APPOINTING TWO.

I, A. B., of \_\_\_\_\_, being about to go to Canada, hereby appoint C. D., of \_\_\_\_\_, and E. F., of \_\_\_\_\_, jointly and severally my attorneys and attorney for me, and in my name to do and suffer as follows:—

[*Follow clauses 1 to 9, inclusive, of the last preceding form, putting “attorneys” for “attorney” in clause 1.*]

10. Generally to do, execute and suffer every such other act, deed, writing, matter and thing as the said C. D. and E. F. or either of them may think [*follow clause 10*].

11. From time to time to appoint any attorney or attorneys under them, and to revoke such appointments.

[*Follow clauses 12 and 13 of last preceding form.*]

\* This enables him to execute powers of attorney delegating his powers or any of them; but the special purpose for which it is inserted is to enable him to engage professional persons to conduct legal business, which may be done by word of mouth.

† This clause may be omitted, or a shorter time may be named if the donor is likely to return in less than a year. If he is absent longer a new power can be executed and made irrevocable for a new term. The object is to give confidence to persons dealing with the attorney (or the donee) under the power. See the introductory remarks.

## CLASS X.—MARRIAGE SETTLEMENTS.

### *What a marriage settlement is.*

1. A marriage settlement is a disposition of property by deed or writing or a written agreement for such a disposition of property, in consideration of marriage for the benefit of one or both of the spouses. It is usually also made for the benefit of the children of the marriage and, in default of issue, for the settlor (who may be one of the spouses) or for some members of his or her family.

### *The advantages of a settlement.*

2. The Married Women's Property Act, 1882, which came into operation on the 1st of January, 1883, by sec. 5, gives to every woman married before 1883, as her separate property, real and personal, her title to which accrues on or after the first day of 1883, including what she acquires in any employment, trade or occupation in which she is engaged separately from her husband, or by the exercise of any literary, artistic or scientific skill. And, by sec. 2, the woman who is married on or after the first day of 1883 is to have, as her separate property, all real and personal property which shall belong to her at the time of marriage or shall be acquired by her or devolve upon her after marriage, including what she acquires in any employment, etc., as above mentioned.

3. These sections put all the wife's existing property and all that may come to her in the same position as property which, before the Act, had been given by deed or will to her, or to a trustee for her, "for her sole and separate use;" but of course no deed or will could cover all that the Act covers, for the Act gives her as her separate property all that may come to her from any source.

4. But although the Act prevents any property owned by or coming to the wife from vesting in the husband by virtue of the marriage, as it did before, the

necessity for a settlement is by no means superseded. In fact, the wider the area of property which the wife can handle without control, the more important it is to prevent her from parting with the land or the capital to her husband or to a stranger, and to preserve it for the children of the marriage.

5. This is done by means of the settlement in two ways; one by the "restraint on anticipation" and the other by providing that, after the death of the parents, the body of the property shall be for the children.

6. The restraint on anticipation is made to apply to such part of the property as is settled, whether by the husband or by a stranger or by the wife herself, on her for her life, and prevents her, *during marriage*, from parting with the body of the property for her life or at all or—what comes to the same thing—the income in advance. When she is a widow the restraint ceases and she may dispose of the whole of her interest; but, if she keeps her interest and marries again, the restraint revives. The trusts in favour of the children after the death of the parents, and sometimes during their lives, of course prevent either parent under any circumstances from parting with any more than his or her life interest.

*What may be settled.*

7. The intended husband may bring into settlement all he has got and may bind himself to settle all he may become entitled to.\* The intended wife may bring into settlement all she is entitled to at the time and all future property that may come to her during the marriage, whether expressed to be for her separate use or not, except such as shall be given her during her marriage subject to a restraint on anticipation; for such property she cannot, during her marriage, convey. If, at the time of the settlement, she had property given to her for her sole and separate use but subject to restraint on anticipation, she may settle it, because the restraint does not affect her while single. •

\* But "any covenant or contract made in consideration of marriage, for the future settlement on or for the settlor's wife or children of any money or property, wherein he had not, at the date of his marriage, any estate or interest (whether vested or contingent, in possession or remainder) and not being money or property in right of his wife, shall, on his becoming bankrupt before the money or property has been actually transferred or paid pursuant to the contract or covenant, be void against the trustee in bankruptcy" (*Bankruptcy Act*, 1883, s. 47).

*The usual provisions of a settlement.*

8. When, upon a marriage, the husband's lands are settled, it is usual to give him an estate for his life only, an allowance to the wife during marriage and an annuity charged on the land by way of jointure for her life in case she should survive her husband. If the land settled is the wife's, she takes the first life estate and her husband takes a life estate afterwards if he survives her. Then comes a charge of portions for daughters and younger sons and then the eldest son is made tenant in tail\* and, in case he dies without issue, the land goes to the second son or his issue, and so on to the sons successively and after them to the daughters equally as tenants in common in tail with cross remainders between them.†

9. When it is desired to settle the land so that the children should take equally, it is a 'good plan to convey it to trustees upon trust for sale, to be effected with the consent of the tenants for life and, after their death, at the discretion of the trustees. The proceeds of the sale are then settled as personal estate (which saves the expense of partition and a great deal of complicated conveyancing) and, until sale the rents and profits are directed to be applied in the same manner as the income of the proceeds would be applicable if a sale had been made. The land is thus in theory converted into personal estate for facility of dealing but is never really sold till the state of the family requires it, which may never happen; for the tenants for life do not consent and, after they are dead, the trustees do not exercise their discretion unless it is necessary, as where there are several children some of whom insist upon a sale.

10. When the settlement is of personal property belonging to the intended wife, the trustees are directed to invest it and pay the income to the wife

\* A tenant in tail is one whose ownership of the property is such that, if he does not bar the entail (which he will have to do if he either sells or makes a settlement), but leaves the land to take its own course of descent, it will only descend to his issue; males being preferred to females. The estate thus described is an estate in "tail general," but an estate may be in "tail male," which will descend only to male issue, or may be in "tail female," which will descend only to female issue.

† That is, the daughters take individual shares and each may bar the entail in her share and get an estate in fee-simple; but, if she does not, her issue will inherit and, if she has none, the share will belong to the other daughters as tenants in common in tail.

during her life “for her sole and separate use, but so that she shall not dispose thereof by any mode of anticipation.” The meanings of the “separate use” and the “restraint upon anticipation” have already been explained. After the wife’s death, the income is to be paid to the husband for life, if he survives her and, after the death of the survivor, whether husband or wife, the whole fund goes among the children of the marriage in such proportions as the parents may have jointly appointed and, if there has been no such joint appointment, as the survivor has by deed or will appointed, and, if there has been no appointment, equally. If there is no issue of the marriage who lives to take a vested estate in the property, it goes to the wife absolutely if she survives her marriage\* and otherwise (subject to the husband’s life interest) as the wife may by will appoint and, if she dies intestate during marriage, then to the persons who would have been entitled, under the statutes of distribution, upon her death intestate and unmarried.

11. Where the personal property settled by the wife is large, it is usual to give her power to appoint a part in favour of a second husband and the issue of a second marriage; otherwise she might be left a widow with only one child and, on her death, the whole of her fortune would go to that child to the exclusion of the children by the second marriage. The same remark applies to personal property settled by the husband.

12. Where the husband settles personal property, the trusts are similar to those above stated, except that the husband takes the first life interest, then the wife, if she survives him, and, in default of issue living to take a vested interest, the property reverts to the husband, his executors or administrators.

### *The trustees.*

13. An agreement for a settlement can be made between the intended husband and wife, or between either and a friend, without trustees being parties or mentioned. But the settlement itself, as above described, cannot be made without vesting the property in trustees, *i. e.* persons whom the Courts regard as the legal owners but as holding only for the benefit of the several persons for whom the settlement provides, who are called equitable owners, beneficiaries or *cestuis que*

\* She may survive her marriage by divorce from her husband as well as by his death.



*trustent.* When one of the trustees dies, the property becomes vested in the survivor and, if *he* dies without a new trustee being appointed, it vests in his executor or administrator. When a new trustee is appointed, the appointment is made by the person to whom power is given for that purpose in the settlement or, where there is no such power, by the surviving trustee or his executor or administrator, and the instrument of appointment may contain words declaring the trust property to be vested in the new trustee, which, subject to certain exceptions, will dispense with the need of any further conveyance. (*Conv. Act*, 1881, s. 34.)

“ *The protection afforded by a settlement.*

14. Where a settlement is made before marriage (commonly called an ante-nuptial settlement) the husband, the wife and the children as they come into existence are all considered as purchasers for value of the interests which the settlement creates in their favour; for marriage is regarded by the law as a valuable consideration. Such a settlement, therefore, will, in the absence of fraud, be good against all present and future creditors of the settling party except such as have judgments at the time;\* and, though there be fraud by one party, the settlement will be equally good in favour of parties innocent of the fraud.

15. The same remarks apply to an agreement for a settlement made before marriage (commonly called “marriage articles”); for, if the settlement has not been executed accordingly, the husband, the wife or any child of the marriage, and sometimes even collaterals in whose favour an ultimate trust has been created, are entitled to have the agreement specifically performed by the execution of the settlement. An ante-nuptial settlement and a settlement made in pursuance of ante-nuptial articles are, therefore, in the same position as to giving to the persons interested the rights of purchasers.

16. And a settlement made after marriage (called a post-nuptial settlement) will, in the absence of fraud, be equally valid if made for a valuable consideration; as if it is made by the husband in consideration of a benefit settled on him by his wife’s relatives.

17. But, if the post-nuptial settlement is *voluntary*,

\* But see note to s. 7 as to husband’s *future* property not transferred before his bankruptcy.

that is, not made for value, it will be void against all those to whom the settlor was indebted at the time, if he did not reserve adequate means of paying them, and also against all subsequent creditors, if made to defraud them.\* As regards personalty, the only risk the voluntary settlement runs is from creditors, for the settlor cannot revoke it; but, as regards realty, he can set it at naught by afterwards selling to a purchaser for value, even though the latter knows of the settlement, and the settlement will be void as against the purchaser.

18. By sec. 5 of the Matrimonial Causes Act, 1859, and sec. 3 of the same title, 1878. the court, after a final decree of nullity of marriage or dissolution of marriage, may inquire into any settlements made on the parties and may order a portion or the whole of the settled property to be applied for the benefit of one or other of the parties or their children, if any. The application is made by petition within a month after decree.

•

*The reading of the following forms.*

19. The word “premises” (*præmissa*) will often be found in the following forms. It means “that which has gone before;” thus “the trust premises” means the property which has been given to the trustees in the earlier part of the instrument; “by reason of the premises” means because of the above-mentioned facts. In leases the word “premises” usually refers to the thing leased; hence its vulgar meaning of a tenement.

Certain clauses often found in settlements made in former years are omitted from the following forms;† such as clauses relating to the appointment of new

\* Independently of this, if the settlor becomes bankrupt within *two* years after the date of the settlement, it will also be absolutely void against the trustee of the bankrupt estate. And, if the settlor becomes bankrupt at any subsequent time within *ten* years after the date of the settlement, it will be void against the trustee in bankruptcy unless the parties claiming under the settlement can prove that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement *and* that the interest of the settlor in such property had passed to the trustee of the settlement on the execution thereof (see *Bankruptcy Act*, 1883, s. 47 (1)). A man intending to make a voluntary settlement should, therefore, have a statement of his affairs prepared by an accountant and should preserve evidence in verification of it.

† The provisions which are omitted, as being supplied by statute, will be found more fully mentioned in connection with Wills, in the introduction to Class XI.

trustees, to the duty of trustees to accumulate an infant's income and their power to allow for his maintenance and to pay money for his advancement (such as a premium to learn a business), powers to settle and to compromise and to give binding receipts, and the clause indemnifying trustees against loss not arising through their wilful default.

20. The Statute of Frauds requires every agreement made in consideration of marriage to be in writing. An agreement for a settlement, as well as the settlement itself, must therefore be in writing and, however informal, must, like every other contract, shew between what parties it is made and on what consideration. Marriage, as already stated, is itself a valuable consideration, and therefore the following letter will bind the writer, though the person to whom the promise is made does not himself settle anything.

#### I. AGREEMENT FOR SETTLEMENT BY A THIRD PARTY.

My dear C., If you marry my daughter D. B., I will settle £5000 consols\* on her and you and the children in the usual way. Faithfully yours,

A. B.

#### II. AGREEMENT BETWEEN INTENDED HUSBAND AND WIFE TO SETTLE PRESENT PROPERTY.

Agreement made the            day of [*month and year*], between A. B., of           , bachelor, and C. D., of           , spinster.

The parties being about to be united in marriage, they each agree to settle in the manner usual on a marriage, according to the nature of the respective properties, all real and personal property of which they are now respectively possessed or to which they are respectively entitled.†

Dated the            day of [*month and year*].

A. B.

C. D.

\* If land had been mentioned, the agreement would have been equally binding. It should at once be stamped.

† To make sure that certain properties are included, you may add here:—"The properties named in the Schedule hereto are to be settled by the parties respectively, but the Schedule is not to control the generality of the agreement and properties within the agreement are to be brought into settlement though omitted from the Schedule."

"Schedule

"To be settled by the intended husband.

[*Describe his properties.*]

"To be settled by the intended wife."

[*Describe her properties.*]

### III. AGREEMENT BETWEEN INTENDED HUSBAND AND WIFE TO SETTLE PRESENT AND \* FUTURE PROPERTY.

1. [*Follow the last preceding form, except the date, inserting the Schedule mentioned in the note if desirable.*]

2. And in like manner to settle all property, real and personal, which shall exceed £            in value, and which the said A. B. during the marriage shall at one time and from one source become possessed of or entitled to or have an absolute power to dispose of. And all property, real and personal, which shall exceed £            in value, and which during the marriage the said C. D., or the said A. B. in her right, or after her death the said A. B. in her right, shall at one time and from one source become possessed of or entitled to or have absolute power to dispose of.

3. Provided that the property or other gains acquired by either party in any employment, trade or occupation, or by the exercise of any literary, artistic or scientific skill, are to be excepted from this settlement.

Dated the        • day of [*month and year*].

A. B.  
C. D.

Clause 2 in the preceding form is so short and simple that it is unnecessary to give the legal reasons on which all its parts are founded. The reasons for the proviso are plain. The man or the woman may often obtain at one time and from one source a sum beyond the limit fixed, having received it as literary, scientific, professional or mercantile gains; and it would not be fair to require him or her to settle it and live on the income.

### IV. SETTLEMENT OF WIFE'S PERSONALTY IN POSSESSION.

This Indenture, made this        day of [*month and year*], between A. B., of           , bachelor, of the first part, C. D., of           , spinster, of the second part, and E. F., of           , and G. H., of           , of the third part, Witnesseth:—

1. In consideration of an intended marriage between the said A. B. and C. D., it is agreed that the said E. F. and G. H. shall after the marriage hold £            Consolidated Bank Annuities transferred into their names by the said C. D. with the consent of the said A. B.

2. Upon trust either to retain or (subject until the death of the said A. B. and C. D. to the written consent of such of them as shall be living) to realise the premises and the investments under the trust and (subject as aforesaid) to invest the moneys realised in or upon any stocks, funds, shares or securities, not being Irish or foreign or the personal security of any person.

3. The trustees shall pay the income of the trust premises during the joint lives of the said A. B. and C. D. to the said

\* As to settlement of future property see *ante*, X, 7 n.

C. D. for her sole and separate use, but so that she shall not dispose of the same in any mode of anticipation and, after the death of either of them, to the survivor during his or her life.

4. Subject to the foregoing trusts, the premises shall be held in trust for such children or child of the marriage and in such manner as the said A. B. and C. D. shall by deed, or the survivor shall by deed, will or codicil, appoint and, so far as the same shall be unappointed, in trust for the children equally (or child if but one) of the marriage who shall attain twenty-one years, or being daughters or a daughter shall attain that age or sooner marry with a guardian's consent; but so that no child shall take an unappointed share without bringing his or her appointed share into account.

5. And, on failure of the foregoing trusts, in trust for the said C. D. if she shall survive the said intended coverture;\* otherwise for such person or persons and so as she shall by will or codicil appoint, and, so far as the same shall be unappointed, for such persons as tenants in common (and in such shares) as on the death of the said C. D. intestate and unmarried would by law have become entitled thereto.

6. Every trustee, present and future, of this settlement, being a solicitor, shall be entitled to the same professional remuneration as if he were not a trustee.

In Witness whereof the said parties have hereto set their hands and seals the day and year first above written.

A. B. [*Seal.*] C. D. [*Seal.*] E. F. [*Seal.*] G. H. [*Seal.*]

Signed, sealed, etc. [*follow one of the forms of attestation given in Class XII*].

Usually where both the husband and the wife settle property, the income of the husband's property goes to him for life and, on his death, to the wife for life, and the income of her property to her for life and, on her death, to him for life.

#### V. SETTLEMENT OF THE HUSBAND'S LEASEHOLD AND THE WIFE'S CONSOLS.

This Indenture, made the            day of [*month and year*], between A. B., of           , bachelor, of the first part, C. D., of           , spinster, of the second part, and E. F., of           , and G. H., of           , of the third part, Witnesseth as follows:—

1. In consideration of an intended marriage between the said A. B. and C. D., the said A. B. *as beneficial owner* † assigns unto the said E. F. and G. H. the premises described in the

\* That is, live after her married state ends, which may be by divorce or by the death of her husband.

† These words imply the covenant for title contained in the *Conveyancing and Law of Property Act*, 1881, s. 7 B. If the husband only assigns "as settlor," this covenant will not be implied.

Schedule hereto, with their legal or usual appurtenances, during the subsisting residue of the term of years created by a lease dated the            day of [*month and year*], from X. Y. to the said A. B.\*

2. The said E. F. and G. H. and the survivor of them, his executors or administrators (hereinafter called "the trustees") shall after the marriage hold the premises and also the sum of £            Consolidated Bank Annuities, transferred into their names by the said C. D. with the approbation of the said A. B., upon trust either to retain or (subject until the death of both the said A. B. and C. D. to the written consent of such of them as shall be living) to realise the premises and the investments under this trust, and (subject as aforesaid) to invest the moneys realised in or upon any stocks, funds, shares or securities, not being Irish or foreign or the personal security of any person.

3. The said trustees shall pay the income of the said Bank Annuities and of such of the premises as shall arise from the said Bank Annuities during the joint lives of the said A. B. and C. D. to the said C. D. for her sole and separate use, but so that she shall not dispose of the same in any mode of anticipation, and, after the death of either of them, to the survivor during his or her life. And shall pay the income of the scheduled premises, while retained (after paying the rent reserved by the said lease and all rates, taxes, payments for insurance and repairs and other outgoings), and after conversion the income of such of the trust premises as shall arise from the said scheduled premises to the said A. B. during his life, and afterwards to the said C. D., if she shall survive him, during her life.

4. Subject to the foregoing trusts, the premises shall be held in trust for such children or child of the marriage and in such manner as the said A. B. and C. D. shall by deed, or the survivor shall by deed, will or codicil appoint, and, so far as the same shall be unappointed, in trust for the children equally (or child if but one) of the marriage who shall attain twenty-one years, or being daughters or a daughter shall attain that age or sooner marry with a guardian's consent; but so that no child shall take an unappointed share without bringing his or her appointed share into account.

5. On failure of the foregoing trusts the scheduled premises and such of the trust premises as shall arise therefrom shall be held in trust for the said A. B., his executors, administrators and assigns. And the said Bank Annuities and such of the premises as shall arise therefrom shall be held in trust for the said C. D. if she shall survive the said intended coverture, and otherwise for such persons or person as she shall by will or

\* If it was not granted to the husband, say from X. Y. to and now by mesne assignments and operations in the law vested in the said A. B.

codicil appoint, and, so far as the same shall be unappointed, for such persons as tenants in common and in such shares as, on the death of the said C. D. intestate and unmarried, would have become by law entitled thereto.

6. The decision of the trustees or trustee for the time being of this settlement as to which of the invested premises shall have arisen from the respective premises hereby settled shall conclude all persons claiming under these presents.

#### SCHEDULE.

All that [*describe the leasehold premises*] comprised in the lease dated the            day of [*month and year*] from X. Y. to A. B.

In Witness whereof the parties hereto have hereto set their hands and seals the day and year first above written.

A. B. [*Seal.*] C. D. [*Seal.*] E. F. [*Seal.*] G. H. [*Seal.*]

Signed, sealed etc. [*follow one of the forms of attestation in Class XII.*]

21. If the husband wishes to insure his life for his wife's benefit he should, before marriage, effect a policy on his life in the names of the trustees, and should then execute a settlement of the policy in the following form. If the policy is settled *after* marriage the first twelve words of the clause numbered 1 should be omitted, as also the words "after the said marriage."\*

#### VI. SETTLEMENT OF A POLICY ON HUSBAND'S LIFE EFFECTED IN THE NAMES OF TRUSTEES.

This Indenture, made the            day of [*month and year*], between A. B., of           , bachelor, of the first part, C. D., of           , spinster, of the second part, and E. F., of           , and G. H., of           , of the third part, Witnesseth as follows:—

1. In consideration of an intended marriage between the said A. B. and C. D., it is agreed that, after the said marriage, the said E. F. and G. H., and the survivor of them, his executors or administrators, shall hold the moneys receivable on a policy for £            on the life of the said A. B., granted on the            day of           , by the            Insurance Company, in the names of the said E. F. and G. H., and numbered           , and also the moneys receivable under every policy effected under the powers hereinafter given.

2. Upon trust that the said E. F. and G. H., or the survivor of them, his executors or administrators (with the written consent of the said A. B. and C. D., and after the death of either, with the written consent of the survivor if living), shall invest the said moneys and the moneys realised under this trust in or upon any public stocks, funds or securities, not being Irish or foreign or the personal security of any person.

\* As to a voluntary settlement after marriage, see *antè*, X, 17 n.

3. The said trustees shall pay the income of the premises to the said C. D., if she shall survive the said A. B., during her life.

4. Subject to the foregoing trusts the premises shall be held in trust for such children or child of the marriage, and so as the said A. B. and C. D. shall by deed, or the survivor of them shall by deed, will or codicil appoint, and so far as the same shall be unappointed, in trust for such children equally, or child if but one, who, being sons or a son, shall attain twenty-one, or, being daughters or a daughter, shall attain that age or sooner marry with a guardian's consent; but so that no child shall take any unappointed share without bringing his or her appointed share into account.

5. On failure of the foregoing trusts the premises shall be held in trust for the said A. B., his executors, administrators and assigns.

6. Bonuses receivable under the said policy are to go in reduction or payment of premiums, either by virtue of any arrangement to be entered into for that purpose with the said company or otherwise.

7. The said A. B. covenants with the said E. F. and G. H., their executors and administrators, that he, the said A. B., will pay the premiums on the said policy, and on every future policy subject to this trust, when due, and will do or suffer nothing whereby any such policy may become void, voidable or lapsed, and, in the event of such policy becoming void, voidable or lapsed, will at his own cost do all acts required to enable a policy in lieu thereof to be effected. And that he, his heirs, executors or administrators, will repay to the said E. F. and G. H., their executors and administrators, on demand, with interest at £5 per cent. per annum, all sums paid by them for effecting or keeping up the said policy or any policy substituted for the same as aforesaid.

8. Provided that all the covenants herein contained shall apply to any such substituted policy in the same manner as to the said policy already effected.

In Witness whereof the said parties have hereto set their hands and seals the day and year first above written.

A. B. [*Seal.*] C. D. [*Seal.*] E. F. [*Seal.*] G. H. [*Seal.*]

Signed, etc. [*follows one of the forms of attestation given in Class XII.*].

22. If, when the marriage and the settlement are agreed upon, the policy has already been effected in the husband's name, he must assign it to the trustees, who, as assignees of the policy may by the Policies of Assurance Act, 1867, sue on it in their own names.\* If the

\* The trustees must immediately give to the company a written notice of the date and purport of the assignment. It must be given to the company at its principal place of business, or—if



assignment is by an instrument distinct from the settlement, the form given in the schedule to the Act (see Class IX, Forms xx, xxi) may be followed, and the last preceding form may be altered so as to declare the trusts of a separately assigned policy, thus:—

VII. SETTLEMENT OF HUSBAND'S POLICY SEPARATELY  
ASSIGNED TO TRUSTEES.

[*Begin as in the last preceding form.*]

1. [*Follow clause 1 down to and including "company"*] to the said A. B. and assigned by him by an instrument of even date herewith to the said E. F. and G. H., and numbered [*follow clause 1 to the end*].

2. [*The rest of the clauses will be the same as in the last preceding form.*]

If the assignment and the settlement are effected by the same instrument,\* it may be as follows:—

VIII. SETTLEMENT OF HUSBAND'S POLICY (AND ASSIGNMENT  
THEREOF TO) TRUSTEES.

This Indenture, etc. [*commence as in last preceding form*].

1. In consideration of an intended marriage between the said A. B. and C. D., the said A. B. assigns unto the said E. F. and G. H., their executors and administrators, a policy for £            on the life of the said A. B., granted to him on the day of [*month and year*], by the            Insurance Company, and numbered           , with all moneys receivable thereon and on every policy effected under the powers hereinafter given.

2. Upon trust that after the said marriage the said E. F. and G. H., and the survivor of them, his executors or administrators (with the written consent of the said A. B. and C. D., if living, and after the death of either, with the written consent of the survivor † if living), ‡ shall invest the moneys receivable on the said policy, and on any other policy effected under the powers there are more than one—at one of them in England, Scotland or Ireland, and the company is then bound, on receipt of not more than 5s. to give an acknowledgment of the notice under the hand of its principal officer, which is to be conclusive proof of the notice. See Class IX, Form xx and note.

\* Notice of the date and purport of the assignment must be given to the company. See last preceding note.

† It seems at first sight absurd to speak of the consent of the husband, who has survived his wife being required to sanction the investment of moneys receivable under a policy on his own life; but the reason of this is that it may be necessary to sell the policy in the event of the husband's not being able to continue it.

‡ *If living.* These words appear puzzling at first; but the reader will observe that it is quite possible for the husband to survive the wife or *vice versa* and yet for the survivor to die before his or her consent is obtained or required.

hereby given in or upon any public stocks, funds or securities, not being Irish or foreign or the personal security of any person, and so that the said trustees or trustee may (subject to such consent as aforesaid) either retain or realize any such investments.

[*Insert clauses 3, 4, 5 and 6, as in Form vi.*]

7. The said A. B. covenants with the said E. F. and G. H., their executors and administrators, that, notwithstanding anything by the said A. B. done or knowingly suffered, he is entitled to execute this assignment of the premises, free from incumbrances and that he and every person claiming under or in trust for him shall, at his own costs do every act required for perfecting such assignment or recovering the moneys due under the same policy or any other policy made pursuant to the trusts hereby created. And that the said A. B. will pay the premiums on the said policy and on every other policy subject to this trust when due, and will do or suffer nothing whereby the same may become void, voidable or lapsed and, in the event of the said policy becoming void, voidable or lapsed, will at his own costs do all acts required to enable a policy in lieu thereof to be effected. And that he, his executors or administrators, will repay to the said E. F. and G. H. and the survivor of them, his executors or administrators, on demand with interest at £5 per cent. per annum, all sums paid by them or him for effecting or keeping up the said policy or any policy substituted for the same as aforesaid.

8. Provided that all the covenants hereinbefore contained shall apply to any such substituted policy in the same manner as to the policy hereby assigned.

In Witness whereof the parties hereto have hereto set their hands and seals the day and year first above written.

A. B. [*Seal.*] C. D. [*Seal.*] E. F. [*Seal.*] G. H. [*Seal.*]

Signed, sealed, etc. [*follow one of the forms of attestation in Class XII*].

23. When the property to be settled is land and it is intended, after the death of the parents, to be divided among the children in such shares as the parents, or surviving parent, may appoint and, in default of appointment equally, it is a good plan to vest it in trustees upon trust for sale. The sale will only take place with the consent of the parents or the surviving parent and, after their death, at the discretion of the trustees. The land is thus, in theory, converted into personalty and the proceeds are settled in that shape, but so that, until sale, the rents and profits shall be applied in the same manner as the proceeds would be applicable if a sale had taken place. Each child thus receives his appointed, or his equal, share without the cumbrous and expensive conveyances and partitions

would otherwise have to be resorted to, and of course without the term for raising portions required in a strict settlement. The conversion is little more than nominal, for the parents will not consent to the sale during their lives and will probably appoint the property in such shares as will render a sale unnecessary. The conveyance of the land to the trustees may be by a separate deed, the settlement being dated of the same day; but the following is the form of a conveyance and settlement in one:—

IX. SETTLEMENT OF THE HUSBAND'S LAND, WITH TRUST FOR THE CHILDREN ACCORDING TO APPOINTMENT.

This Indenture made the            day of [*month and year*], between A. B., of           , bachelor, of the first part, C. D., of           , spinster, of the second part, and E. F., of           , and G. H., of           , of the third part, Witnesseth as follows:—

1. The said A. B., in consideration of an intended marriage between him and the said C. D., conveys *as beneficial owner*\* unto the said E. F. and G. H. the hereditaments described in the Schedule hereto to hold to the use of the said E. F. and G. H. and their heirs.

2. Upon trust after the marriage that the said E. F. and G. H. and the survivor of them, his executors or administrators (which several persons and other the trustees and trustee for the time being of these presents are hereinafter called "the trustees") with the written consent of the said A. B. and C. D. and after the death of either with the written consent of the survivor, if living, and, after the death of both at the discretion of the trustees, shall sell the premises with the discretion of absolute owners as to all that relates to the sale, buying in, rescinding contracts, reselling and executing assurances.

3. Upon trust as to the clear sale moneys (subject to the written consent as aforesaid) to invest the same and the moneys realized under this trust in or upon any stocks, funds, shares or securities not being Irish or foreign or the personal security of any person and so that the trustees (subject to such consent as aforesaid) may either retain or realize every such investment.

4. The trustees shall pay the income of the trust premises, including the income of unsold hereditaments held in trust for sale to the said A. B. during his life and afterwards to the said C. D., if she shall survive him, during her life.

5. Subject to the foregoing trusts, the premises shall be held in trust for such children or child of the marriage and so as the said A. B. and C. D. shall by deed, or the survivor shall by deed, will or codicil, appoint and, so far as the same shall be

\* These words are better than "as settlor," which do not imply the necessary covenants.

unappointed, in trust for the children equally or child if but one who shall attain twenty-one years or, being daughters or a daughter, shall attain that age or sooner marry,\* but so that no child shall take an unappointed share without bringing his or her appointed share into account.

6. On failure of the foregoing trusts, the premises shall be held in trust for the said A. B., his executors, administrators and assigns.

7. The trustees may, subject to the trusts preceding the creation of any minor's interest, raise and apply for his or her benefit half or less of his or her interest under the trust.

8. The said A. B. and C. D. and the survivor of them and, after their death, the continuing trustees or trustee or the personal representatives of the last surviving or continuing trustee, may appoint one or more persons to supply any vacancy among the trustees.

9. No trustee shall be responsible for deferring the sale of any of the trust premises, notwithstanding any consequent loss or expiration of interest.

10. Every present and future trustee who is or shall be a solicitor shall be entitled to the same professional remuneration as if he had not been a trustee.

#### THE SCHEDULE.

[*Describe the hereditaments.*]

In Witness whereof the parties hereto have hereto set their hands and seals the day and year first above written.

A. B. [*Seal.*] C. D. [*Seal.*] E. F. [*Seal.*] G. H. [*Seal.*]

Signed, sealed etc. [*follow one of the forms of attestation in Class XII*].

24. There is another mode by which, without converting the land into personalty as in the last precedent, it may be settled so that, after the parent's death, the children may enjoy it in such shares as the parents please and the cumbrous provisions of a strict settlement may be avoided. It is done by vesting the land in trustees to hold in trust for the parents for life and, after the death of the survivor, for the children according to appointment and, so far as it is unappointed, for the children in equal shares as tenants in common in tail with cross remainders between them. By appointment, the parents or, if they have not made a joint appointment, the surviving parent, can give all the property to one child or can divide it among several children in unequal shares according to their respective requirements. But, if no appointment is made by the parents or the surviving parent, each of the children

\* Add, if you please, "with a guardian's consent."

will enjoy during his or her life an equal *undivided* share of the land and, if one dies without having issue, his share will go among the others, unless he bars the entail and the remainders, which he is at liberty to do. If the estates tail of all the children remain unbarred, those who have issue will take their own shares and so share in the shares of those who die before them without issue, and the land will descend to the issue (females if there are no male issue) of the owner of each share.

The deed conveying and settling the land on these trusts is beyond the scope of this book; so I merely insert an ante-nuptial agreement for such a settlement, which will bind the parties to settle the property whether the settlement is executed before or after the marriage.

**X. AGREEMENT FOR A SETTLEMENT OF THE HUSBAND'S LAND, WITH REMAINDERS TO CHILDREN ACCORDING TO APPOINTMENT, AND IN DEFAULT OF APPOINTMENT IN EQUAL SHARES.**

This Agreement made the            day of [*month and year*], between A. B. of           , bachelor, of the first part, C. D. of           , spinster, of the second part, and E. F. of            and G. H. of            of the third part, Witnesseth as follows:

1. In consideration of an intended marriage between the said A. B. and C. D. it is agreed that the hereditaments described in the Schedule hereto shall be vested in the said E. F. and G. H. to hold

2. Upon trust after the marriage for the said A. B. for life without impeachment of waste with remainder for the said C. D. for life with remainder for the children of the marriage as the said A. B. and C. D. shall by deed appoint and, so far as they shall not appoint, as the survivor of them shall by will or codicil appoint and, so far as unappointed, for the child of the marriage or, if there be more than one child, for the children in equal shares as tenants in common in tail with cross remainders between them;

3. Upon trust after the death of the said A. B. and C. D. during the minority of any child of the marriage to receive the income of the premises and to manage the estate and to keep down interest on charges and incumbrances, and to pay the clear yearly income to such of the children of the marriage as shall have attained twenty-one years his her or their shares or respective shares of the annual income, and out of the share of any minor to provide for his or her maintenance and education (payment to a guardian being such a provision) and to accumulate the residue by investment in or upon any stocks, funds, shares or securities not being Irish or foreign or the personal security of any person and, subject to a resort to such accumulations for the purpose of maintenance and education, to hold

the same upon the same trusts as the shares from which they have arisen ;

4. With power after the death of the said A. B. and C. D.\* during the minority of any child of the marriage to grant any part of the premises by agricultural leases for twenty-one years or less and by building leases for ninety-nine years or less to take effect in possession or within six months of the execution thereof and for the best rent to be reasonably gotten.

5. And the trustees shall have power with the written consent of the said A. B. during his life and, after his death, with the written consent of the said C. D. during her life and, after the death of the survivor of them† during the minority of any child of the marriage, to sell all or any of the premises or exchange the same for other hereditaments in England or Wales.

#### THE SCHEDULE.

[*Describe the hereditaments.*]

In Witness whereof the said parties have hereto set their hands the day and year first above written.

A. B.      C. D.      E. F.      G. H.

Signed, etc. [*follow one of the forms of attestation in Class XII*].

25. Another way of settling land on a marriage is by what is called “a strict settlement;” a mode involving many complicated provisions which are inserted for reasons, and operate in ways, not understood even by every lawyer. Without attempting to explain the instrument of settlement itself, I will try to state shortly its effect.

When the settlement is of the husband’s real estate, it is to the husband for life, with provision for the wife’s pin-money while her husband is alive and her jointure when he is dead and the younger children’s portions and, subject thereto the first and other sons successively in tail male and ultimately, on failure of these, to the husband and his heirs in fee. The husband has powers of management during his life and, after his death, subject to the widow’s jointure and portions for the younger children, the land goes to the eldest son and his issue male and, if he has none and does not bar the entail, to the younger sons successively and their issue male under the same conditions and, upon the death of the sons without issue male or barring the entail, to the heirs of the husband, who

\* These words are inserted to enable the trustees to deal with the entirety of the land during the minority of any child; a power which is not given by the Settled Land Act, 1882.

† See last preceding note.

will be the daughters, if any. And sometimes the land is expressly given to the daughters as tenants in common in tail with cross remainders between them, the effect of which was explained in the introduction to the last preceding form.

No child takes an estate tail and a portion as well.

26. No settlement, however strict, can keep the land in the family in perpetuity; for the eldest son, on becoming tenant in tail can, with the consent of his father, bar the entail and the remainders over and sell the land and, after his father's death, can do so without consent, unless, instead of a jointure, the mother has a life estate in the lands, in which case her consent is required.

"When the son attains 21 in his father's lifetime, the father frequently grants his son a provision during their joint lives, in consideration of which the son joins with his father in settling the estate in such a manner that, if he dies without issue, the estate may go over to the younger branches of the family."\* This is how the land is kept in the family.

27. "In making a marriage settlement, a man should always look to a future marriage. His wife may die young, leaving an infant family, and he may have no power to jointure any other wife or to provide portions for the children of any other marriage. The same observations apply to a woman who is about to settle property on her marriage."\* The husband, as to *the lands* settled by him, should reserve the powers above mentioned and the wife, as to the lands settled by her, should reserve powers to charge them with an annuity for herself on a second marriage and with portions for the children of such marriage.

28. The term "strict settlement" will import a settlement of the nature above described with one or other of the variations mentioned; but, to secure definiteness and prevent a reference to any Court, I have added to the agreement a clause requiring the settlement to be prepared by one of the conveyancing counsels to the Chancery Division. When an agreement for such a settlement with the usual provisions and powers is made in the following form, the intended husband, the intended wife, or anyone who comes within the consideration of the marriage is entitled to have a settlement executed, providing for all the matters above mentioned. I have inserted an agreement to

\* Lord St. Leonards' 'Handy Book.'



Although the same provisions as are applicable to real estate of inheritance will by no means suit real estate not of inheritance, or leaseholds or other personal estate, yet all these kinds can be included in the same settlement, which will preserve each kind for the benefit of the family, so far as the rules of law and equity will allow. I have, therefore, made the form to include, by reference to the schedules, property of each kind belonging both to the intended husband and to the intended wife. If it should happen that there is any of those three kinds of property which either the intended husband or the intended wife does not possess, the body of the agreement may easily be altered, or, even if it be left as it is, no difficulty will arise, as the schedules will explain the body of the agreement.

This Agreement made this                      day of [*month and* ]  
between A. B., of                      , bachelor, of the first part, C. D., of  
                    , spinster, of the second part, and E. F., of                      , and  
G. H., of                      of the third part, in consideration of an  
intended marriage between the said A. B. and C. D., Witnesseth  
as follows:—

2. The said A. B., as to his property described in the first part of the \*second Schedule hereunto annexed, and the said C. D. as to her property described in the second part of the said Schedule, agree to execute a settlement of such property for the same purposes and, as far as the rules of law and equity

\* The wife will take a life estate in the lands settled by her and, if they will furnish her with a proper income, there is no need to burden her husband's lands with a jointure for her.



will permit, in the like manner as of the said firstly scheduled premises, and such settlement shall contain the usual trusts as to discharging the lessee's liabilities and renewing such of the leases and grants of the said secondly scheduled premises as may be renewable.

3. The said A. B. and C. D. agree respectively to settle in like manner all property, real and personal, according to the several natures thereof, which shall exceed £        in value and which the said A. B. during the marriage shall at one time and from one source become possessed of or entitled to or have an absolute power to dispose of And all property, real and personal, which shall exceed £        in value and which, during the said marriage, the said C. D. or the said A. B. in her right, or after her death the said A. B. in her right, shall at one time and from one source become possessed of or entitled to or have an absolute power to dispose of; Provided that the property or other gains acquired by either of the said A. B. or C. D. in any employment, trade or occupation or by the exercise of any literary, artistic or scientific skill, are to be excepted from this agreement.

4. The settlement shall be drawn by one of the conveyancing counsel to the Chancery Division.

5. The said E. F. and G. H. shall be trustees of the settlement.

#### FIRST SCHEDULE.

##### Part I.

*[Here describe husband's estates of inheritance.]*

##### Part II.

*[Here describe wife's estates of inheritance.]*

#### \* SECOND SCHEDULE.

##### \* Part I.

*[Here describe husband's leaseholds for lives or years and personal property.]*

##### Part II.

*[Here describe wife's leaseholds for lives or years and personal property.]*

A. B.      C. D.      E. F.      G. H.

Signed etc. *[follow one of the forms of attestation in Class*

\* This schedule will include estates for life, leaseholds for years, and personal property of whatever kind; the intended husband's property being placed in the first part of the schedule, and the intended wife's in the second part.

## CLASS XI.—WILLS.

*The Statute of Wills, 1 Vict., c. 26.*

1. This Statute, on which is chiefly founded the modern law of wills, came into operation 1st January, 1838. Of wills made before that time, and not sincere-executed,\* nothing will here be said; the object being to show the reader how he may make his will now, and what its effect will be.

*Who may make a valid will?*

2. Every one may make a will; except as follows:

No one who is not of full age may make a will, unless he is a soldier in actual military service, or a sailor at sea; as to which classes of persons (*see post*).

No married woman may make a will; except—

(1.)—Where she is possessed of a real or personal property which she holds, or is entitled to her\* separate property;

(2.)—Where she has power given to her by some will, settlement, or other instrument, to appoint by will to whom certain property shall belong;

(3.)—Where she is herself the sole, or sole surviving, executrix of another testator, and she makes a will to appoint an executor or executrix to succeed her in her office;

(4.)—Where her husband is banished;

(5.)—Where she is judicially separated.

The will of a married woman, to which the husband consented in her lifetime, disposing of personal property, will, nevertheless, be valid if her husband, after her

\* Her separate property may be what has been given to her as such by will or settlement, or may consist of gifts from her husband or other persons such as wedding gifts, or may be what is made her separate property by the Married Woman's Property Act, 1882, or what she has acquired since the date of a decree of judicial separation or since the date of desertion mentioned in a protection order. (See my little book on the Law of Husband and Wife. London: Effingham Wilson and Co.)

death, file his consent to the grant of probate. This is not properly an exception to the rule, as the will derives its validity from the husband's consent, and not from the wife's dominion.

No person can make a valid will who is under duress, an idiot, imbecile, insane or lunatic (except during a lucid interval), or who has been from his birth deaf, dumb, and blind. Nor can a person who, after making his will, becomes incapacitated, revoke his will till his condition mends.

No person can make a valid will while he is so drunk that he does not know what he is doing, or is in any other way intoxicated and deprived of his wits.

No one who is attained of, or outlawed for treason, can make a will of real or personal property, nor can any one who is attained of, or outlawed for, felony, or who is outlawed in a civil action, make a valid will of personal property.

An alien (*i. e.*, one who is not a born British subject) may, since the 12th of May, 1870, make a will of real and personal property as freely as a natural born British subject may do; but before that date he could only make a will of personal property, including a lease of a house for not more than 21 years, and then only if he were an alien friend and a merchant.

3. No will will be valid which has been procured by fraud, duress or undue influence; but we have no space for defining these. With respect to the latter, I will merely say that if a testator benefits another from a feeling of affection, of duty, or of gratitude, or in consequence of the mere persuasion of that person, this will not amount to undue influence. Being led by an immoral consideration is not being under undue influence. Undue influence implies some kind of coercion.

#### *How wills must be executed and attested.*

4. All wills, except, in certain cases, those of soldiers and seamen (*see post*), must be signed by the testator "at the foot or end thereof," or at least "under, beside, or opposite to" the end thereof. And it will be prudent to place the testator's signature immediately at the foot, and then to write the form of attestation immediately underneath, and all along the page, as is done in form 1 (*post*).

If the testator cannot write, whether from ignorance, paralysis, local bodily injury, or any other cause, he

should procure some other person to sign his (the testator's name) in his presence.\* It is better that this person should not be one of the witnesses, if two can be found beside him.

A testator may lawfully sign with his mark, but the other plan is far better. A seal is not a sufficient signature.

5. This signature, whether by the testator himself, or by some one for him, must be "made or acknowledged by the testator in the presence of two or more witnesses who shall attest and shall subscribe such will in the presence of the testator, but no form of attestation shall be necessary."

The above quotation is from the Statute. It shows that a testator may either—

(1.) Sign his own name, or get some one to sign it for him in the presence of two witnesses present together; or

(2.) Acknowledge before two witnesses, present together, a signature which he has previously made, or which another has previously made for him.

The former is the more usual plan, and preferable for many obvious reasons; among others, because it is less open to dispute and more satisfactory to relatives, and because it is more likely to impress the facts on the recollection of the witnesses.

6. The witnesses should then attest, that is to say, sign the will. No *form* of attestation is absolutely necessary, and the Statute will be satisfied by their simply writing their names under, or alongside the testator's name near the foot of the will. But, for the purpose of facilitating the grant of probate by the Court, it is highly desirable that one of the forms of attestation should be used which are given, in forms xix—xxii of this Class, inclusive.

These forms differ according as the testator signs in the presence of the witnesses, or acknowledges before them a signature previously made by himself or a signature made by another person for him. The object of the forms is to express the compliance with the Statute as to the presence of both witnesses at the same time, etc., and also by making mention of the instrument as a will, to impress the minds of the witnesses. It is very desirable to choose witnesses of intelligence, and whose abode is fixed, so that they may be found if necessary, or their handwriting identified; and for this purpose it

\* Where the person so called in has signed his own name, it has been held valid, but it is better to sign the testator's.

is desirable, though not necessary to add the occupations and addresses of the witnesses.

7. The will will not be invalid by reason of the witness signing by a mark, though this should be avoided if possible, and if one is obliged so to sign, the testator, or the other witness, if able to do so, should write the marksman's name and address against his mark.

It is not necessary, though very desirable, that the witnesses should know that the instrument, the execution of which they are attesting, is a will. If the nature of the instrument is intentionally concealed from them, the form of attestation should be altered by omitting the mention of a will. The attestation clause should always be read by the witnesses.

The two witnesses\* must be present at the same time and place where the signature of the testator, or his acknowledgment, is made, and they must see the act of signature or, in case of an acknowledgment, must see that the signature is there. The testator and the witnesses should be within sight and hearing of one another, and (though it is not absolutely required) the witnesses had better not separate till both or all have signed. The usual form of attestation speaks of them as signing in each other's presence. If any word is scratched out, or written between the lines or altered, the testator and the witnesses should sign in the margin opposite to each such alteration, or should sign a memorandum referring to each and every alteration at the end of the will (*see post*).

1  
*Who may be witnesses.*

8. Any man or woman, though under age, if sufficiently capable of understanding, may be a witness.

If the will gives a benefit in the way of property to a person, or the husband or wife of a person, who attests the will, the attestation will remain good, but the benefit will be wholly void.† The fact that there are two witnesses besides the person in question will make no difference. If, however, an attesting witness afterwards marries a person who takes under the will, the gift will not be void.

\* There may, of course, be any number more.

† Wills Act, s. 15. If a solicitor is appointed trustee under a will with power to make professional charges for work done in the execution of the trust, and he attests the will, he cannot charge profit-costs, but only disbursements. His partner will be in the same position.

But the above rule does not apply (1) where the will is attested by a trustee or executor who takes no beneficial gift, but only by way of trust; or (2) where real or personal estate is charged for the benefit of a creditor, and the creditor, or his or her wife or husband, attests the will. And attesting a codicil does not render void a gift in a will.

*How wills may be revoked, revised, and altered.*

9. A will is revoked in the following way:—

By a subsequent marriage,\* even though the will were expressed to be made in contemplation of that very marriage. But no other change of circumstances will amount to a revocation, or lead to a presumption to that effect. As to the revival of a will so revoked, see s. 18 and form xxvi *post*.

By a will, codicil, or *other* writing, declaring an intention to revoke the former will and executed in the same manner as a will.†

By another will, not in terms revoking the former, but inconsistent with it.‡

“By the burning, tearing or otherwise destroying the same by the testator, or by some person, in his presence, and by his direction, with the intention of revoking the same.”§

A will is not revoked by mere cancelling, *i. e.*, drawing the pen through the words and signatures; but a perfect obliteration, so that the material words cannot be read, will be regarded as a destruction within the meaning of the statute. •

\* “Except a will made in the exercise of a power of appointment when the real or personal estate thereby appointed would not, in default of such appointment, pass to his or her (the testator’s or testatrix’s) heir, customary heir, executor, administrator, or the person entitled as his or her next of kin, under the Statute of Distributions, 1 Vict., c. 26, s. 18.

† A married woman, even if not in the position in which the law allows her to make a will, may revoke a previous will by any of these modes; and if she chooses to do so by a writing executed and attested as a will, it will operate as a revocation none the less for purporting to be itself a will.

‡ But a testator may dispose of his property by several wills and codicils made at different times; and, if they are not inconsistent, and if the last contains no words of revocation, they may all stand together. This, however, should be avoided. Each will should be complete in itself and should contain words revoking all former wills. If only a simple alteration is required, this may be made by a codicil, but any extensive change should be made by a new will.

1 Vict., c. 26, s. 20. •

It is not necessary to the revocation of a will, by burning, tearing or otherwise destroying, that the whole will should be torn, burnt or destroyed. If the testator, with the intention of revoking the will, tears off his signature, that will be a sufficient tearing. The whole would be affected by the tearing of the essential part.

A tearing or obliteration may also be partial, and may be so done as to amount to a partial revocation only.

It will be observed that any tearing, burning or destruction must be done by the testator, or by some person in his presence, and by his direction, with the intention of revoking the will. If, therefore, such acts are performed by him by accident, or during insanity, or drunkenness, probate will be granted of a copy or draft of the destroyed will. Nor will a tearing of a will be a revocation, if done with a view to the execution of a new one which is not executed; nor if done under the impression that a new will is valid which is not so.

It will be observed that no destruction in the testator's absence by another person, at his request, will be a revocation.

Where a testator has executed his will in duplicate, and keeps one part himself and deposits the other with another person, and then tears, burns or destroys his own part, the mere existence of the other part will not prevent the act amounting to revocation. But, where both parts are in his own possession, it is easier to show that the destruction was not done with a view to revocation.

If a testator, after making his will, sells, gives away or loses all the property which he has given by his will, the will still remains valid, though of course it does not pass the property which the testator no longer possesses.

A will may be altered by the testator executing a codicil as above mentioned, revoking parts and substituting others; or by his scratching out some words and inserting others and executing, with the formalities of a new will, a memorandum referring to such alterations. (See forms xxiii, xxvii, *post.*)

10. "No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in the manner hereinbefore required, and showing an intention to revive the same."\*

\* First part of s. 22 of 1 Vict., c. 26. The latter part of the section provides that, if a will is partly revoked, and then wholly revoked, and then revived, such revival shall only apply to the part

Where a will has been once revoked by another will or codicil it is not revived by the destruction of the revoking instrument, but it can only be revived as above mentioned.

*What property may pass by a will.*

11. Every one capable of making a will may thereby dispose prospectively of all property to which he shall have a right at the time of his death, and which, in the absence of a will, would go to his heirs, or his executors or administrators.

An exception to this rule is where the testator is tenant in tail, *i. e.* where he holds lands to him and the heirs of his body. He cannot dispose of such lands by will, unless he bars the entail by a disentailing deed in his lifetime. But he may make the will disposing of his lands first, and may make the disentailing deed afterwards. ●

A testator may also devise or bequeath property, real or personal, to which he has the right to succeed on the happening of a great event; and if that event happens between the making of his will and his death, the property will pass to the person to whom it is given by the will. So, also, suppose the testator to have the right to enter and take possession of property held by some other person upon conditions which the latter has broken, the testator may devise this right to another, and that person, after the testator's death, may enter as he himself might have done.

But where a man is sole mortgagee of lands (*i. e.* when they are held by him only as security for money) or where he is sole trustee of lands, and, in either case, has an estate of inheritance in them (*i. e.* more than an estate for life or years) they will go on his death to his personal representatives, *whether he makes a will or not*, and they may realise the security in the one case and must execute the trust in the other. And, in saying "lands," I mean to include any interest in them of the duration above mentioned.\*

which was in operation immediately before it was wholly revoked, unless a contrary intention appears.

\* This is roughly the meaning of section 30 of the Conveyancing Act, 1881, which says:—"Where an estate or interest of inheritance, or limited to the heir as special occupant, in any tenements or hereditaments, corporeal or incorporeal, is vested on any trust or by way of mortgage, in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from



A testator may devise his copyhold land, unless he is tenant in tail, even though he has not gone through the form of being admitted.

12. Here I must request the unlearned reader to acquaint himself with the distinction between real and personal property.

Real property includes all interests in freehold or copyhold lands, amounting to a life estate, or any greater estate. For example, if I hold freeholds to me and my heirs for ever, which is a fee-simple, or to me and the heirs of my body, which is a fee-tail, or if I hold similar estates in copyholds, or if I hold lands of either tenure for the life of myself or another, these interests are real property. So is the interest which I retain in such property after I have mortgaged it, called my equity of redemption. In this class are also included advowsons and rent-charges, other than for years, and also the rights of common, mining, fishing, turbary, etc., if not held on a lease for years, or as appurtenant to leaseholds for years.

13. Personal property consists of money, and all securities for money, including mortgages, and ships and all moveables whatsoever, and leaseholds. But leaseholds, which are called "chattels real," and are said to savour of the realty, will, under some circumstances, pass by a devise of real property. And, therefore, where all the testator's real property is to go to one person and all his personalty to another, it is desirable to specify whether the leaseholds are to be included in the realty or not.

14. If a man dies intestate, all his real property which does not end with his life will descend to his *heir* ;\* for example, if he has children, to his eldest son, or, if the latter is dead, to *his* eldest son ; and, in other cases, according to the rules of descent which are beside the scope of this book. So also if he has made a will, but there is any portion of his real property not included therein, this portion will *descend* as above mentioned. In like manner the real property held by a time to time in like manner as if the same were a chattel real vesting in them or him." And then it goes on to give power to deal with the property.

\* But where the intestate is a man who has died after the 1st of September, 1890, leaving a widow but no issue, all his real and personal property, if not worth more than £500, goes to his widow absolutely. And, if it is worth more than £500, she takes £500 out of it, apportioned between the realty and the personalty, if there are both, and afterwards takes her distributive share of the residue. (*Intestate Estates Act*, 1890.)

woman for an estate of inheritance descends to her heir. Even if she is married her unsettled estates so descend, subject to her husband taking an estate in the lands for his life, when he is entitled to it "by the courtesy of England." He is so entitled when he has had issue by his wife capable of inheriting the land in question, even though the issue has not survived so as to do so.

As regards personal property, if the owner dies intestate, it will go, after his death, among the persons entitled under the Statutes of Distribution, and if there is any part of his personal property not included, by specific or general words, in his will, this will go in the same way.\*

By these Statutes, which were passed in the reign of Charles II and James II, the residue of the personal estate of an intestate (other than a married woman, whose personalty goes to her husband), after payment of debts, goes in the following manner:—One-third to the widow, and the remainder among the children, the issue of deceased children taking their parent's share; if there is a widow, and no children or issue of children, then half to the widow, and the rest among the next of kin, and if they are dead, then, sometimes, to their issue;† if there is no widow, then all to the children, if there are any, and, if not, to the next of kin, but among collaterals issue do not take a deceased parent's share beyond the children of the intestate's brothers and sisters.

\* Observe the following as a consequence of the rule that the next of kin in the same degree take equally, except that the children of a deceased parent take his share among them. If I leave a son and two grandchildren by a deceased son, my personal estate is divided into two parts, one for my son, and one for my two grandchildren; but if I leave no sons, and three grandchildren, one through one son, and two through another, then (if there are no other persons entitled) my estate will be divided into three parts, one for each grandchild. Observe, also, that if I leave a father, and brothers and sisters, the father, as next of kin, takes all; for my father is only one step from me, whereas my brothers and sisters are two steps from me, namely, one up to my father, and another down again to me. A mother, however, would not have the same right, but would share equally with my brothers and sisters. This is the only case under the Statutes in which a male is in a better position than a female. The father takes all the personal property of a child who dies unmarried and intestate; but this is by the common law. The father also, by virtue of the statute 3 and 4 Will. 4, c. 106, inherits the fee-simple estates of a son so dying.

† Among collaterals, *i. e.* those who are not ancestors or descendants, it is only the children of brothers and sisters who represent their parents.

15. The next thing to be remembered is that a will takes effect as regards the real and personal property comprised in it, as if it were made immediately before the death of the testator, unless a contrary intention appear by the will.

Thus if I, having no real property but a cottage, make a will devising to my brother all my real property in England (which is called a *general devise*), and then my cottage is sold, and afterwards, my will being still unrevoked, I become possessed of a whole county and then die, the county will pass to my brother. Similarly, if I have devised all my lands in Essex, then all the lands I may have in Essex will pass by the devise, though I may have had more or less in the meantime.

The same with regard to personal property. Thus, if I have only a watch and a £5 note, and bequeath to my brother all my personal property (which is a general bequest), and subsequently make a large fortune in money, or other personalty, and keep it till my death, it will pass under the bequest.

So also if I give all my real property to my brother, and all my personal property to my wife, and then sell all my real property and turn it into money, which I keep till my death, my wife will have all, and my brother nothing; while if I spend all my money in the purchase of land, my brother will have all and my wife nothing.

Nay, more, if I *agree* to sell a piece of land, this will be a loss to the person to whom I have devised my lands, and my executor will receive the purchase-money as part of my personal estate. If, however, I agree to buy a piece of land and devise it, and die before it is paid for, the devisee will only take it subject to the payment of what is due for purchase-money (17 & 18 Vict., c. 113 & 30 & 31 Vict., c. 69, s. 2). If I intend that the person to whom I have given land shall have the price of it if I sell it; or that the person to whom I have left money shall have any land which I may buy with the money; or that the person to whom I have given land which is not paid for should have it paid for out of my money—these intentions must be expressed.

Now, it may be precisely the testator's meaning that (after payment of debts and legacies) all property of a certain kind should go to one person, or among certain persons and that all property of another kind should go to another person, or among other persons. This is a very common and very prudent way of disposing of

property. If this is his meaning, he will have nothing to do but to take care to have, at his death, a fitting proportion of each kind of property.

But if he does not wish his will to have this effect he should "express an intention to the contrary," by restricting his devise or bequest to property already acquired, or to a certain amount.

A devise of land may be restricted to that which belongs to the testator at the time, by describing it by name, as "my manor of Dale," or by calling it "the land of which I am now seised," or by other similar expressions. Personalty being more frequently changing, is better limited by amount.

16. If I devise land by a specific description, as last-mentioned, such as "my manor of Dale," and, after making my will, I have disposed of it, or part of it, then my devisee\* will have only what there is left at my death, unless I direct that in case I shall not leave the lands in question, in whole or in part, my devisee shall have the deficiency made up to him.

So if I bequeath "my ring," or "my horse," this speaks of specific things which I have at the making of my will; and if I part with these things, and buy another ring and another horse, the legatee will not have the articles, or any equivalent.

But if I bequeath "all my Consolidated Bank Annuities," this is like "all my lands in Essex," and will pass all the Consols I may have at my death. "My manor of Dale" and "my ring" point out specific things, but this bequest describes a quantity, which may be increased or diminished.

The following forms guard against these difficulties by a clear expression of meaning.

17. Sometimes a testator has a power of appointing to whom property, real or personal, shall belong. These powers are sometimes given by marriage settlements, and sometimes by the wills of other persons. Sometimes they apply to property in which the person to whom the power is given has a life interest, and sometimes to property which he himself never enjoys.

When the power of appointment is a general one, *i. e.* a power to appoint to any persons whomsoever, and for any interests, it will be considered to be exercised by a general devise of realty, or bequest of personalty, according to the nature of the property. Where the power of appointment is a special one, *i. e.* a power to appoint to individuals or classes, it is otherwise.

\* The person in whose favour the devise is made.

Thus if I give lands to A. for life, and afterwards to such persons and for such estates as B. shall appoint, and B. devises all his real property to his son, the son will take the land in question. But if I give lands to A. for life, and afterwards to such child or children of his as he shall appoint, the lands in question would not pass by A.'s will unless it referred to the power.

*What Language should be used in certain Cases.*

18. The rules by which lawyers put a construction on wills cannot well be explained to a non-lawyer. Some of these rules are impliedly given in the following forms and the notes to them; for the rest the following statements must suffice:—

Trustees take the legal estate or interest in the property given to them upon trust. The persons for whom they hold are called beneficial or equitable owners, and their interests are recognised and protected by the Court.

If land is devised to A. B. without more, he takes the largest interest which the testator had in the land, unless a contrary intention appear. Formerly he would only have taken an estate for life, unless the words “and his heirs for ever,” “his heirs and assigns,” or the like words had been used.

19. If I give a legacy or lands in fee-simple to A. B., and he dies before me, his heir will not have the lands, nor his executors the legacy, unless a contrary intention appear by the will.\*

Where a gift lapses in the above manner, or because it is contrary to law, it forms part of the residue of the estate, and will go to the person or persons, if any, among whom the residue is given, if any; and, if no gift of the residue is made, it will go as if there were no will.

But if A. B. is my “child or other issue,” and he dies before me, leaving issue who survive me, the devise or bequest will not lapse, but will take effect as if A. B. had died immediately *after me* (*Wills Act*, s. 33). Therefore, if A. B. had made a will containing a general devise or bequest, so as to include the property in question, it will pass to the person to whom he gives it; for

\* In order to prevent the gift thus lapsing the testator should say in the case of real property, “to A. B., or, if he be dead, to his heirs;” and, in the case of personal property, “to A. B., and, if he be dead, to his executors or administrators for the benefit of his estate.” But, where a gift is made to one as trustee for another, it does not fail by the death of the trustee in the testator's lifetime.

A. B. is to be considered as having survived me, and as having taken under my will. If, however, A. B. died intestate, or left a will which did not, expressly or by implication, include the property in question, it will go as if he were intestate, namely to his eldest son if it were real estate, and, if it were personalty, among his children, according to the Statutes of Distribution.\*

20. If I give real property to a person for life, and do not say who is to have it after his death, the remaining interest will go to the persons, if any, to whom I give the residue of my real estate; or, if there is no residuary devise, then it will go as if I had made no will.

If you give money or public stock or other securities for money to one for life, and after his death to another, it should be vested in a trustee upon trust for the one for life, and after his death for the other.

21. If you wish to give property to two or more, and you desire the children or devisees or legatees of each to have his share after him, you must give it to the two or more "equally," or "as tenants in common," otherwise it will belong to the longest liver.

22. If you devise lands which are subject to a mortgage or charge, the person to whom you devise them will take subject to the charge, and he will not be entitled to have it paid off by your executor, as was formerly the case, unless a contrary intention appear by your will (17 & 18 Vict., c. 113).

And the same enactment applies where you give by will land which you have bought or agreed to buy, but have not paid for. The devisee, if he chooses to take the gift at all, will do so subject to the payment of the purchase-money remaining due,† which is a charge.

The "contrary" intention is not to be inferred by your directing your debts to be paid out of your personal estate, or out of your residuary real and personal estate (30 & 31 Vict., c. 69; 40 & 41 Vict., c. 34). If you wish to give the land clear of the charge, you must direct the sum with which that land is charged—or all charges upon your lands—to be paid out of your personal estate or some source other than the land in question.‡

\* But s. 33 does not apply to an appointment under a special power (*Holyland v. Lewin*, 26 Ch. D. 266).

† If you do not give the lands by will, but let them descend, your heir will, in this respect, be in the same position as your devisee, unless, in some deed relating to the land, you have expressed a contrary intention.

‡ These statutes do not affect the right of the mortgagee, or the

23. If you make gift of property, whether real or personal, to a woman, it will become, by virtue of the Married Women's Property Act, 1882, her separate property if she marries or is already married, and, though married, she may part with it, or her interest in it, to her husband or any other person. If you wish her to be protected *while married* from persuasion to sell the land or the capital sum, or its income in advance, say "for her sole and separate use but so that she shall not dispose thereof in any mode of anticipation." This "restraint on anticipation" applies only while the woman is married, and leaves her unfettered when single or a widow.

If you give property to a man and his wife and a third person in equal shares, the third person will take half and the husband and wife will take the other half between them, each taking a fourth; for the Married Women's Property Act, 1882, has not destroyed the unity of husband and wife (*re Jupp*, 39 Ch. D. 148; but see *re Dixon*, 42 Ch. D. 306). You must, therefore, say "equal third shares," or otherwise express your intention, if you wish the husband to have a third and the wife to have another third. But in either case the wife's share will be her separate property.

24. "Unmarried" and "dying unmarried" usually mean "without having married;" as, if you make a gift of land to A., a bachelor, for his life and, if he dies unmarried then to B., and A. at your death is a widower, the gift over to B. will not take effect.

25. If, *when you make your will*, you owe a man money (not being due on a negotiable bill or note, nor being a fluctuating balance), and you leave him a legacy of the same or a greater amount, it will be presumed to be in satisfaction of the debt,\* and your creditor will not have the legacy and the debt as well. If you mean otherwise, you must say so. [*See forms* under number xxviii.]

person entitled to the charge to be paid off by your executor. If the land is given or descends subject to the charge, the executor can come on the land for what he has paid, and if you have cast the burden on the personalty, and that is insufficient, the land will have to bear what is lacking.

\* But if you give your creditor a legacy of less amount, it will not be a satisfaction in whole or in part. Nor if the legacy is to be paid at a future time. Nor if it is uncertain in amount, as a gift of a residue or a part of a residue. Nor if it is payable on a contingency. Nor if a motive be assigned for the gift. Nor if the will contains a direction for payment of debts. In these cases the creditor will have the legacy and the debt as well.



If the debt did not arise till after you made your will, your creditor will take the debt and the legacy, whatever be the nature or amount of the latter.

If a man owes you money, and you leave him a legacy, this is no forgiveness of the debt, and your executors may retain the legacy or a sufficient part of it in satisfaction of the debt. Nay, if by your will you expressly forgive the debt, and do not leave enough to pay your own, your debtor may pay his debt; and, if he die before you, his estate will be liable to the debt, though your will remain unaltered.

26. If you are under an obligation by your marriage articles or settlement to provide portions for your children, and you give any of them a legacy, it will be satisfaction of the portion as far as it goes, unless described as being in addition to the portion.\* So also if you have made a will giving your children legacies, and afterwards give one of them a sum to advance him in life, this will be a satisfaction of the legacy as far as it goes, and the child will not take both.† If you mean your child to have the legacy and the portion too, you must make a codicil, after giving the portion, stating the legacy to be in addition; but it will not be sufficient simply to make a codicil confirming your will.

27. In leaving money to your mistress describe her by her name. If she goes by your name describe her as "M. R., known as M. S.," or as "the person with whom I have cohabited, known as M. S." In leaving money to your illegitimate children describe them by name as registered; or, if they have taken your surname, describe them as "A. S., B. S., and G. S., children of M. S." Illegitimate children have, however, been allowed to take a gift to "children" where it was clear that the testator intended by that word to indicate his illegitimate children (*re Haseldine*, 31 Ch. D. 511).

A clerical error will be corrected by the Court where the will is nonsensical without it and the proper correction can be gleaned from the context (*Northern's estate*, 28 Ch. D. 153).

### • Who may take under a Will? •

28. Witnesses, their husbands and wives, and persons

\* A gift of a residue will be a satisfaction of a portion as far as it goes, though not of a debt.

† The same rule will apply if you have put yourself in the place of a parent to another. But in the case of a stranger the rule will not apply unless the gift and the legacy were expressed to be for the same purpose.



claiming through them, with the exceptions mentioned above (under the heading "*Who may be witnesses*"), cannot take. But if a person who takes a gift under a will marries an attesting witness, it does not affect the validity of the gift.

Infants, though they cannot manifest an intention to take a gift, will be presumed to do so, unless it is clogged with an injurious condition, and the property devised or bequeathed will be given them at twenty-one, if no other period is fixed by the will.

A gift may be made to a lunatic, but if the Courts have treated him as such the property will go into the hands of his committee or the person having charge of his estate.

An alien (*i. e.* one who is not a born British subject) may take a gift of real or personal property.

So may a married woman; and it will be her separate property. But see remarks *ante*.

A gift may be made to a bankrupt; but if the testator dies before the certificate is granted, the benefit passes to the assignees.

Legacies of personal property for endowing places of worship, or for promoting the Roman Catholic religion, or any other form of Christianity, are valid, unless obtained by the undue spiritual ascendancy of the minister, or some other person. But bequests for the good of the testator's soul, or to pay for prayers and masses, are void.

Bequests of personalty (other than leaseholds or money secured by mortgage) for charitable purposes are valid, unless given for the purchase of land or for a purpose which renders the purchase of land necessary. In making such gifts, it will be well to say "to be paid out of such portion of my estate as may be lawfully bequeathed for charitable purposes."\* Speaking generally, land cannot be devised to a corporation to which the Crown has not granted a license to hold land in mortmain.†

By the Mortmain and Charitable Uses Act, 1888, Her Majesty is authorised to grant to a person or corporation a license to assign lands in mortmain and, to a corporation, a license to acquire them. And the corporation in either case may be sole (as a bishop is) or aggregate (as a university is).

By the same Act, a person may, by will executed not

\* But a bequest will be good for the improvement of land already in mortmain (see next note), as for building an organ-loft or chancel.

† That is, *in mortuū manu*, or in dead hand.

less than twelve months before his death, devise not more than twenty acres for any one public park; not more than two acres for any one public museum and not more than one acre for any one school-house, including teacher's dwelling, playground, etc. Or he may bequeath personalty to be laid out in land of these areas for their respective purposes. And, however near to the testator's death the will is made, it will still be good if it is a reproduction of a previous will made not less than twelve months before his death and standing unrevoked when the last will is made.\*

By the Working Classes Dwellings Act, 1890, a person may, by deed or will, give not more than five acres of land, or personal estate to be laid out in land, not exceeding five acres for dwellings for the working classes "in any populous place," which includes "the administrative county of London, any municipal borough, any urban sanitary district, or any other place having a dense population of an urban character." The will is to be registered in the books of the Charity Commissioners within six months after probate and the deed within six months after execution.

*Provisions which need not be inserted in a Will because they are implied by Law.†*

29. An executor or administrator may give public notices requiring those who have claims against the estate to send in their claims on or before a certain day and, if the notices are such as the Court would itself have ordered, may distribute the estate without reference to any claims which have not come in; leaving those whose demands are not sent in and paid to "follow the assets" into the hands of the persons who have received them (for notice see Class XII, form ii). 22 and 23 Vict., c. 35, s. 29.

Each trustee of a deed or will, or other instrument creating a trust, is chargeable only for such moneys, stocks, funds, and securities as he receives, although he

\* But the Act does not affect a devise of land or a bequest of money to be laid out in for the Universities of Oxford, Cambridge, London, Durham or the Victorian University or any college or house of learning within any of them; or for the colleges of Eton, Winchester or Westminster for the benefit of their scholars, or for the warden, council and scholars of Keble College.

† In certain settlements and wills it is desirable to give to trustees powers beyond what are given by law; such as to apportion blended trust funds, to determine whether moneys are to be treated as capital or income and to decide disputed questions.

may have joined in a receipt for the sake of conformity, and is not chargeable for the default of any person with whom such property is deposited, nor for its deficiency or loss not happening through the wilful default of the trustee himself. And the trustees may reimburse themselves, out of the trust property, the expenses of carrying out the trusts. Every instrument creating a trust is to be deemed to contain a clause to this effect, unless it provides otherwise. (See *ibid.*, s. 31.)

And by sections 41 and 43 of the Settled Land Act, 1882, the same protection is given to trustees of land under any "settlement;" that is, any deed, will, or other instrument by which any land is given to any persons by way of succession. Executors enjoy the like protection independently of these enactments.

30. Unless forbidden by the will or instrument, trustees, executors, and administrators may invest trust moneys on real securities in the United Kingdom, or stock of the Bank of England or Ireland, or East India stock, or in any securities the interest of which is guaranteed by Parliament, provided the investment is in other respects proper (22 and 23 Vict., c. 35, s. 32, and 30 and 31 Vict., c. 132). They could always invest in consols, or, for temporary purposes, in Exchequer bills.

31. Where property is given to trustees upon trust for sale or with power of sale, they may do everything about the sale with the discretion of absolute owners, without being liable for loss (see Conveyancing Act, 1881, s. 35).

And the receipt of a trustee for any money or property which he is entitled to receive under the trust is a sufficient discharge to the person who pays, transfers, or delivers it, and clears him from responsibility for its misapplication. (See *ibid.*, s. 36.)

Executors have these powers independently of the statute, and so has each executor.

And an executor may pay or allow any debt or claim on any evidence that he thinks sufficient, and may accept any composition, or any security for any debt or property claimed for the estate, and may compromise, compound, submit to arbitration or otherwise, settle any debt, claim, or thing, and may, for any of these purposes, execute or sign any such written instruments as may seem expedient. And, so doing in good faith, he will not be responsible for loss. (*Ibid.*, s. 37.)

Subject to any contrary intention expressed in the instrument creating the trust, the same powers may be

exercised without responsibility for loss by two or more trustees acting together, or by a single trustee where, by the instrument, one trustee may execute the trust. (*Ibid.*, s. 37.)

Powers or trusts given after 1881 to two or more executors or trustees jointly may be executed or performed by the survivor or survivors, unless the contrary is expressed in the instrument (if any) creating the power or trust. (*Ibid.*, s. 38.)

Where property is held in trust for an infant, either absolutely or contingently on his attaining twenty-one years, or on the occurrence of any event before his attaining that age, the trustees may, at their sole discretion, apply the whole or any part of the income to the infant's maintenance, education, or benefit. (See *ibid.*, s. 43.)

32. Where a trustee dies, or remains abroad for more than twelve months, or wishes to retire, or refuses or is unfit to act, or incapable of acting, the person nominated in the will as the person to appoint new trustees may exercise that power, and, if there is no such person, or if the person empowered is not willing to appoint, the surviving or continuing trustee, or the personal representative of the last surviving or continuing trustee, may fill up the vacancy.\* (See *ibid.*, s. 31.)

### *Of the testator's domicile.*

33. Where a testator has left the land of his birth, and taken up his abode permanently in another, and where a British subject has left that part of the British dominions where he was born and has established himself in another part, he should remember that his will is liable to be affected by the law of domicile. Domicil answers very well to our word *home*, and where a man has two residences, one in one country and the other in another, the phrase "he made the latter his *home*" would point to the latter as his domicile.

Domicil is acquired in either of three ways.

Domicil of birth or origin is that which a person acquires by being born of parents who are domiciled in a certain country. The domicile of a child is that of his father, and of his mother during widowhood. If he happen to be born while his parents are on a journey his domicile is still that of their home. He

\* New trustees may be appointed under this clause where a trustee nominated by the will dies in the lifetime of the testator; but the enactment does not apply to vacancies occurring in the lifetime of the testator otherwise than by death (sec. 31, subsec. 6).

cannot change this domicile of his own choice till he is of age. But if he is sent by his parents or guardians into a foreign service, or into a permanent engagement in a foreign country, apart from the control of parent or guardian, his domicile will be in the country which he serves or where his engagement is. Domicile of choice is where a man voluntarily takes up his residence in another country not for a mere special or temporary purpose, but with the intention of making it his permanent home, or at least of remaining there until some uncertain or unexpected event shall induce him to adopt some other permanent home. A long residence abroad on account of ill-health will not alone suffice to give the invalid a foreign domicile. The question, therefore, being one of intention, is to be solved by the testator's acts and declarations. What intention did he express in letters of friendship or of business? Has he provided for permanent residence in the place in question? Do his family, or those members of it to whom he is attached, live with him? Where does he keep his heirlooms, deeds, and other valuables? Where does he exercise his political rights? These are the kind of questions on which the decisions in cases of domicile depend. But stronger evidence is required to show that a man has changed his domicile than that he has adhered to his original one. If an acquired domicile is abandoned, the domicile of origin revives. Persons in the civil, naval, or military service of any country are considered as domiciled in the country whose servants they are, wherever their residence may be.

Domicile may also be by operation of law. Thus the domicile of a wife, though under age, is that of her husband, even though they be living apart. A divorced woman, or one judicially separated, may choose a new domicile; but it is supposed that, until she does so, she may retain the domicile of her husband.

As a general rule domicile cannot be lost or acquired by compulsion; but when a man is transported for life his domicile is lost, and his wife may choose a new one. Intention, as well as foreign residence, is necessary to effect a change of domicile, and, therefore, ambassadors, consuls and other servants of a state, residing for any length of time within the limits of another state, do not acquire a domicile there.

34. I will now give the two leading rules with regard to domicile; premising that the latter, as regards British subjects, has lately been modified by statute. These are—

1. If a testator devises real property, he must do so according to the formalities required by the law of the country in which the property is situate, wherever his own domicile may be.

2. If he bequeaths personal property, he must do so according to the formalities required by the law of the country in which he is domiciled, wherever the property may be.

Thus, if an Englishman domiciled in France makes a will according to the law of France giving real property in England and personal property in several other countries, the real property will not pass unless the will be executed according to the law of England as well as of France, but the personal property will pass wherever it may be. The theory on which this doctrine is founded is that personal property, consisting of moveables, is capable of following the testator's person wherever he goes, but that land, being immoveable, must always remain subject to the laws of the country where it lies.

35. But by Statute 24 and 25 Vict., c. 114, passed 6th August, 1861, an important change was made concerning the wills of English subjects.

By sec. 1, if a British subject is out of the United Kingdom (wherever his domicile may be then, or at his death), and makes his will, it is to be good for admission to probate in England, Ireland, or Scotland *as regards personal estate*, if made in either of the following ways, namely :—

(1) According to the forms required by the law of the place *where it is made* ;

(2) According to the forms required by the law of the place *where the testator was domiciled* when he made it ; or

(3) According to the law in force in that part of Her Majesty's dominions *where he had his domicile of origin*.

By sec. 2, if a British subject makes his will within the United Kingdom (whatever may be his domicile then, or at the time of his death), it is to be good for admission to probate in England, Ireland, or Scotland, if made according to the forms required by law *in that part of the United Kingdom where it is made*.

By sec. 3, if after making a will a testator changes his domicile, the will shall not thereby become revoked or invalid, nor shall the mode of interpreting it be changed. The Act only applies to wills made by persons who shall die after 6th August, 1861.

One or two examples will show the effect of the Act. According to the first section, if an Englishman were to sur-

render his English domicil, and acquire one in France, and then go on a journey to Turin, and there make his will, it would be valid for passing personal property, if made according to the law of Italy, or of France, or of England. But it must be remembered that the Statute can only have this effect on personal property *in the British dominions*, and can by no means bind the French Courts to confirm a will made according to Italian law.

By the second section, if an Englishman had surrendered his English domicil, and acquired one in any other country, and had come to England on a journey, and made his will here according to English law, it would be valid for the purpose of passing personal property in the United Kingdom. A Scotchman being temporarily in England may thus make a will of personal estate according to English law; and so may an Englishman, being temporarily in Scotland, make his will according to Scotch law.\* But remember that sec. 1 does not render valid the will of an Englishman abroad made according to Scotch law, or of a Scotchman abroad made according to English law, unless those laws happen to be in accordance with the law of the land where the will is made.

By the third section, if I make a will in England, and then acquire a domicil in France or in Scotland, I need not make my will again, but it will be valid *as regards personal estate* in the British dominions.

For the purpose of enabling a will made under the provisions of this Act to be valid, so as to pass personal property of the testator which is in foreign countries, and consequently under the dominion of foreign law, as well as that which is under the dominion of English law, another Statute, 24 and 25 Vict., c. 121, was passed the same day.

This Act provides that Her Majesty may enter into a treaty with any foreign State, by which it shall be provided that every British subject dying in such State unless he shall have resided there for a year and shall have made a declaration in a public office of an intention to become domiciled there, shall be regarded for all purposes of succession to personalty as retaining the domicil which he had before going to reside in such State. After making such a treaty Her Majesty may give to such pro-

\* England, Scotland, and Ireland are separate countries as far as concerns domicil. But the testamentary law of England being the same as that of Ireland, questions of Irish domicil have seldom arisen. As to personal property, these questions are now set by the Statute as between England, Scotland, and Ireland.

visions the effect of law by an order in Council published in the *Gazette*, and may also enter into a like stipulation with reference to the subjects of the State in question dying in England, except such as are naturalized as British subjects.

That which a British subject, therefore, should always bear in mind is, that if he bequeaths personal property scattered abroad in every country in Europe, the Court of Probate will grant probate if the will were made according to the formalities required by that part of the British dominions in which the testator is domiciled or in either of the other ways mentioned in the Statute, and the property lying in any country connected with us by treaty made under the Act will go to the executor, to be dealt with according to English law.

Whenever a testator has changed his domicile, or is living in a country other than that in which he is domiciled, he should let this appear by a description of himself in his will; as "A. B., an Englishman domiciled in France," or "A. B., a domiciled Englishman living in France," as the case may be.

37. No question of domicile arises with reference to real property. In whatever country the lands are, according to the laws of that country must the will be made. It will, therefore, be desirable sometimes to have two wills, one of personalty according to the law of domicile, and another of realty, according to the law of the land where it is, taking care, however, that one refers to the other, or, at least, that neither purports to be the only will. If there is realty in other countries there should be other wills.

### *Wills of Soldiers and Seamen.*

(See Appendix.)

38. The wills of soldiers in actual military service\* and of seamen at sea† (with certain important exceptions as regards

\* I should explain that this phrase is equivalent to "on an expedition." It has been held that a soldier in barracks in England or a colony, a soldier on a tour of inspection in India, and a soldier at Malta with his regiment under orders for the West Indies must execute and attest a will as required by the Statute of Wills. But the will of a minor written in pencil after a mortal wound at Aliwal, an unsigned memorandum written on the back of a regular will after the testator had been wounded in battle, and the letter of an officer to his brother containing gifts of personal property, and written while he was passing from one regiment to another, both regiments being in active service, have been admitted to probate.

† The expression "at sea" is equivalent to "on a voyage," and therefore applies to a person who has touched at an intermediate port. A will made by an admiral on a foreign station at his house



sailors to be presently mentioned) are exempt from the operation of the Wills Act, but only as far as relates to personal property.

Soldiers and sailors so situated may not only make their wills by a writing neither signed by witnesses nor attested, but they may make them without writing at all and without being of full age. Such unwritten wills are called *nuncupative*, and must be made by word of mouth to one or more witnesses, the testator at the same time calling on them to bear witness that it is his will. It seems that nuncupative wills will remain valid unless revoked, though the testator lives in England several years after the date of the will. But I ought to point out the importance of reducing the terms of a will to writing, where possible, and of procuring the written attestation of one and, if possible, two witnesses, as required by the Wills Act; thus at the same time reducing to a certainty the nature of the gift and the evidence on which it is supported, and shutting out any question as to compliance with the Act.<sup>1</sup>

39. As regards sailors, I alluded to certain exceptions from the exemption from the Wills Act, *i. e.* certain cases in which it is necessary, *in order to pass certain property*, that a will should either comply with the Act, or should be more than a mere nuncupative will. And, indeed, there is one case in which certain property will not pass unless one of the attesting witnesses belongs to a certain class.

By the Merchant Shipping Act, 1854, s. 194, where any seaman or apprentice belonging to or sent home in any British ship employed on a voyage which is to terminate in the United Kingdom dies during such voyage, the master of the ship is to take charge of his money and effects on board, and is to hand over the money and the effects, or their price, together with any wages due to him, to a shipping-master or consul, with an account; and it is the duty of the latter to remit the property to the Board of Trade (s. 195).

By the 197th section\* where such seaman or apprentice, or one who within six months before his death belonged to a  
on shore, and a will made by a seaman in port on the day when he shipped, but fifteen days before he sailed, have been held to require the usual forms; but a letter written by a merchant seaman from his vessel lying in Margate Roads, a letter written by a master of a vessel in a port at which he touched on his voyage, and testamentary entries in a log-book during a voyage to Valparaiso, have been admitted to probate.

\* As amended by the Merchant Shipping Act Amendment Act, 1862, s. 20.

British ship, dies in or out of the Queen's dominions, possessing money and effects not on board his ship, a similar duty is cast upon the chief officers of customs or the consular officer at the nearest place.

In section 198 there are like provisions concerning wages to which a seaman or apprentice dying in the United Kingdom may be entitled from the master or owner of any ship in which he has served.

If the money and effects so remitted to the Board do not exceed £50, the Board may deliver them to the person entitled under a will, or, if no such person applies, they may distribute them to the widow and next of kin, without requiring probate or administration; and if the money and effects do exceed £50, the Board are bound to pay them over to the executor or administrator of the deceased, but in the case of an executor, the will under which he claims must comply with the requisitions of the statute (s. 199).

Now the property which a sailor carries about with him and the wages due to him at his death may amount to a large or a small sum, and, in either case, may form either a large or a small proportion of his total property. But it is as regards this property which thus comes into the hands of the Board of Trade that the Board have power to require something more than a mere nuncupative will; the latter kind of will, however, being sufficient to pass all the rest of a sailor's *personal* property.

The following, then, are the powers which the Act, by s. 200, gives to the Board concerning wages and effects in their hands:

1. They may refuse to deliver such wages or effects to a person claiming under a will *made on board ship*, unless such will is in writing and is signed or acknowledged by the testator in the presence of the master, or first or only mate of the ship, and attested by such master or mate.

2. If the wages or effects are claimed by a person not related to the testator by blood or marriage under a will made elsewhere than on board a ship, the Board may refuse to deliver the property unless such will is in writing and is signed or acknowledged by the testator in the presence of and is attested by two witnesses, one of whom must be a shipping-master appointed under the Act, or some minister, officiating minister or curate of the place in which the same is made, or, in a place where there are no such persons, some magistrate, British consular officer or officer of customs.

Thus we see that, in order to compel the Board of Trade to deliver property in their hands to the claimant under a will, it is required (1) when made on board ship to be written and signed, or acknowledged in the presence of one witness of a certain kind, and attested by him; and (2) when not made on board ship, and not in favour of a relative, to be in writing, and signed or acknowledged in the presence of two witnesses, of whom one must be a person of a certain class and both must attest. In the latter case, therefore, something more is required than would satisfy the Wills Act.

If the will under which the claimant claims does not comply with one or other of these provisions, the Board are not bound to pay over the property in their hands, and may deal with it as if no will had been made. The will, however, though insufficient as regards property in the hands of the Board, may be good as regards all other personal property.

40. These provisions of the Merchant Shipping Act of course apply only to the merchant seamen. As regards wages, pay, prize-money, bounty, and allowances, seamen and marines in the Royal Navy are protected by the Navy and Marines (Wills) Act, 1865.

By that Act, s. 3, a will of a seaman or marine, if made before he enters the service, is not to be valid to pass the kinds of property above mentioned, and, by s. 4, it will be invalid for that purpose, though made after he has entered the service, if written on the same paper or parchment with a power of attorney.

By sec. 5, a will made by a seaman or marine in the service, or when he has ceased to serve, is not to be valid for that purpose

(1) Unless it is executed in accordance with the Wills Act;

(2) Unless, when made on board a Queen's ship, one of the two attesting witnesses is a commissioned officer or warrant or subordinate officer belonging to the naval, marine, or military force;

(3) Unless, where not made on board a Queen's ship, one of the two attesting witnesses is commissioned officer or chaplain or warrant or subordinate officer as aforesaid or the governor, agent, physician, surgeon, assistant surgeon or chaplain of a naval hospital at home or abroad or a justice of the peace or the incumbent curate or minister of a church or place of worship in the parish where the will is executed or a consular officer or officer of customs or a notary public.

A will executed in conformity with these provisions is to be valid as to the property above mentioned for the purpose of being admitted to probate, and the representative appointed by the will is the sole person entitled to deal with such property.

By section 6, a prisoner of war may make a valid will *for all purposes*

(1) If his signature to it is made or acknowledged by him in the presence of and attested by one witness, being a commissioned officer or chaplain in the navy, marine or army, or the agent of a naval hospital or a notary public.

(2) If made in accordance with the law of the place where made.

(3) If made in accordance with the Wills Act. •

But the Admiralty, in the case of a will of a seaman or marine in actual military service or a mariner or seaman at sea, may hand over the above-mentioned property to any person entitled under a will, though not made in conformity with the Act, if, having regard to the circumstances of the death of the testator, the Admiralty is of opinion that compliance with the Act may be properly dispensed with.

41. The Regimental Debts Act, 1863 (which, by the regulation of the Forces Act, 1881, is made to extend to all persons subject to military law as officers or soldiers, whether within or without the Queen's dominions), provides for the payment of the regimental debts of officers and soldiers dying in service, and these debts are constituted preferential charges and a Committee of Adjustment is to see them paid. By this Act it is enacted that, where the original will of an officer or soldier dying in service comes to the hands of the Secretary of State for War or of the Secretary of State for India and representation under the will has not been taken out, it may be deposited :—

In the depository of the Court of Probate in London if the domicile of the testator was in England or India or any of Her Majesty's possessions abroad or in any foreign country ;

In the Court of Probate in Dublin if his domicile was in Ireland ; and

In the office of the clerk of the Commissary Court of the County of Edinburgh, if the testator's domicile was in Scotland.

And an inventory of the personal estate and its application, as far as known, may be deposited also.

The Act of 1881 enables the Committee of Adjustment to transfer all the property of the deceased to an official adminis-

trator, on the preferential charges being paid or secured, and to desist from further meddling, and enables the paymaster of the forces, on receiving the surplus out of the United Kingdom, to pay it over to the representatives, widow or children of the deceased, though not present at head-quarters.

## FORMS OF WILLS.

Where a testator does not wish to interfere with the distribution of his personal property which would take effect by law in case he were to die without leaving a will, but wishes to entrust such distribution to some person other than the one who would be entitled to administration, he will find the following form useful, especially if time presses,—always remembering that it leaves his *real* property (*see s. 12*) to descend according to the rules of law.

### I. WILL SIMPLY APPOINTING AN EXECUTOR.

This is the will of me, A. B., of \_\_\_\_\_, made this \_\_\_\_\_ day of [*month and year*].

\*I appoint G. H. my executor, and bequeath to him my personal estate in trust for distribution according to the law.

A. B.

†Signed by the said A. B., as his last will, in the presence of us, being present at the same time, who, at his request, in his presence, and in the presence of each other, subscribe our names as witnesses.

‡C. D. [*Description and Address.*]  
E. F. [*Description and Address.*]

Where a testator has children under age, and wishes to give his wife the entire control over them and his property, and is not afraid of her marrying again without providing for them, he will find the following form convenient :—

\* If the testator has made a will previously which he wishes to revoke, he should use the revoking clause at the beginning of the next form.

† Another form of attestation may be necessary. (See Forms xviii to xxi.)

‡ G. H. may be one of the two witnesses, but if the testator adds a bequest to him, whether for his trouble or individually, he will lose it. (See s. 8.)

## II. ALL PROPERTY TO WIFE.\*

This is the last will of me, A. B., of \_\_\_\_\_, made the day of [month and year].

1. I revoke all my previous testamentary instruments.
2. I give all my real and personal property to my wife.
3. I appoint her my executrix and guardian of my children under age.

A. B.

Signed, etc. [*as in Form i, unless one of the forms of attestation numbered xviii to xxi should be necessary*].

Where the testator wishes to give the children a portion of his property, and leave the rest for his wife's support, and under her control, he may use the following form. It contains a direction, by which, in case the testator from losses or change of investments, does not leave sufficient personal property to pay the legacies, his real property will come in aid, so that his children may not be disappointed.—

## III. LEGACIES TO WIFE AND CHILDREN, AND ALL THE REST TO WIFE.

This is the last will of me, A. B., of \_\_\_\_\_, made this day of [month and year].

1. I revoke all my previous testamentary instruments.
2. I bequeath £\_\_\_\_\_ to my wife, and £\_\_\_\_\_ to all my present and future children, equally if more than one, or to my child if but one, who shall attain twenty-one, or being daughters or a daughter, shall attain that age or sooner marry with the guardian's consent, and who shall survive me or shall die before me, leaving issue surviving me,† the legacies of daughters to be to their sole and separate use, free from the control of any husband,‡ but so that they shall not dispose thereof by any mode of anticipation.

\* This may be made to serve as a form for a will in favour of any person by placing his or her name in place of the wife, and putting executor for executrix if he is a male, and omitting the words about guardianship, if inapplicable.

† It must not be supposed that the issue of a son who has died in testator's lifetime will necessarily take equally, or at all. They will only have a share in the legacy if the son dies without a will (as he must do if he dies under age), or leaves it by will to them equally. Though the testator's son never comes into this legacy, yet it will follow his will, by virtue of which one of his children or a stranger may be entitled to the whole of it. See the effect of this clause further explained in sec. 19. Notwithstanding this, it is a wise disposition, and very commonly used, for it leaves it in the power of the testator's child to benefit his children if he pleases.

‡ It is always safer to give legacies to daughters in this way, but if the testator lives to see his daughter married to a trustworthy and dutiful husband, who would feel benefited by having the control

3. I direct that my real estate shall go in aid of my personalty in case the latter shall not suffice for payment of the above legacies.

4. Subject as aforesaid, I give all my real and personal estate to my wife.

5. I appoint her my executrix, and guardian of my children under age.

A. B.

Signed, etc. [*as in Form i, unless one of the forms of attestation numbered xviii to xxi should be necessary*].

The above form may be varied by the introduction of other legacies or of devises of land such as will be found in the following form, and under No. xxviii.

#### IV. LEGACIES TO WIFE AND CHILDREN AND DEVICES OF LEASEHOLDS AND FREEHOLDS.

This is the last will of me, A. B., of \_\_\_\_\_, made this day of [*month and year*].

1. I revoke all my previous testamentary instruments.

2. I bequeath to my wife £ \_\_\_\_\_, to be paid fourteen days after my death,\* and all the furniture of my dwelling-house, and all the ornaments and works of art, household plate, linen, china and glass, and all wines, fuel, and other consumable household stores being therein or belonging thereto. I bequeath to my trustee and executor £ \_\_\_\_\_, for his trouble.†

3. ‡ I bequeath £ \_\_\_\_\_ to all and every my present and future children or child who shall attain twenty-one, or being daughters or a daughter shall attain that age or sooner marry with the guardian's consent, and who shall survive me, or die before me leaving issue surviving me; the legacies to daughters to be to their sole and separate use free from the control of any husband, but so that they shall not dispose thereof by any mode of anticipation.§

4. I bequeath my leasehold premises in \_\_\_\_\_ to C. D., his executors and administrators, upon trust to pay the rents and

of the legacy, the testator may advance it to him, and may make a codicil declaring that the daughter in question is not to have a legacy under the will, or only a legacy of so much. The words restraining anticipation leave the woman free to dispose of the property while single or a widow, but prevent her, while married, from disposing of the body of the property, or the income in advance, to her husband or any other person, and leave her to receive the income only.

\* A small sum for immediate use.

† These words attach the legacy to the office of executor, and if he does not act he will not have the legacy. Another legacy may be given to him as an individual, so that he may have it whether he acts or not.

‡ See s. 19, and the like clause in Form iii and note.

§ As to the restraint on anticipation, see note to Form iii.

profits thereof\* to my wife for her life so long as she shall continue my widow,† she discharging the lessee's liabilities in respect thereof, and, after her death or other marriage, in trust for all my children equally who shall then be living, or who shall have left issue then living, such issue of any deceased child of mine to count as one child, and to take the share of their deceased parent equally.

5. I devise my lands held for estates of life or of inheritance‡ to my said wife for her life as long as she shall continue my widow,† and upon her death or other marriage to my eldest son S. and his heirs for ever.§

6. I give all the residue of my personal estates to my wife.

7. I appoint my wife, and the said C. D., executrix and executor of this my will and guardians of my children under age.

A. B. .

Signed, etc. [*as in Form i, unless one of the forms of attestation numbered xviii to xxi should be necessary*].

If the testator desires that his freehold lands and his estates of inheritance should be enjoyed, after his wife's death or other marriage, by his children equally, the following clause may be used instead of Clause 5 in the last form :—

I devise my lands held for estates for life or of inheritance to my said wife for her life, so long as she shall continue my widow, and upon her death or other marriage to all and every my present or future children or child equally, if more than one, who shall attain twenty-one or being daughters or a daughter shall attain that age or sooner marry with the guardian's consent, and who shall survive me, or shall die before me leaving issue surviving me; the shares of my daughters to be settled to their sole and separate use free from the control of any husband, but so that they shall not dispose thereof by any mode of anticipation.||

Where the testator has children but no wife, or a wife for whom provision is already made, and he possesses

\* This will allow of her occupying any of the leasehold premises.

† If you mean to give this property to your wife for her life whether she marries again or not, omit the words "so long as she shall continue my widow," and, a few words after, "or other marriage."

‡ This will include copyholds. The life estates are of course for the lives of others.

§ This gives the son an estate in fee-simple, of which he may dispose, even in his mother's lifetime. If he is not to be trusted to this extent, omit "and heirs for ever," and continue thus: "for his life, and after his death to such of his children, and for such estates as he shall by deed or will appoint, and in so far as the same shall be unappointed, among his children equally, and if he no children, then to my own right heirs for ever."

|| See note to these words in Form iii.



property of various kinds, and desires to leave it all equally among his children, the following form will be found useful. It vests the property in trustees upon trust to give each child an equal share as he or she comes of age, or (if a daughter) marries, and it empowers the trustees to sell for that purpose. This is the best mode which can be adopted to secure an equal division. But the trustees need not carry out the power of sale, and, if they do, such of the children as are of age may buy any portion they please with their shares, or with any other means which they may have. In this way the property has a good chance of being divided so as best to suit the tastes and prospects of the children.

V. PROPERTY TO TRUSTEES ON TRUST FOR CHILDREN  
EQUALLY.\*

This is the last will of me, A. B., of       , made this day of [*month and year*].

1. I revoke all my previous testamentary instruments.

2. I devise and bequeath all my real and personal property not hereby otherwise disposed of, to C. D., of       , E. F., of       , and G. H., of       , upon the following trusts to be performed by them or the survivors or survivor of them, his executors or administrators.

3. Upon trust to retain or realise my invested personalty, and (after paying my funeral and testamentary expenses, debts and legacies) to invest the proceeds with the sale moneys of my real estate in or upon any public stocks, funds, shares, or securities not being Irish or foreign or the personal security of any person.

4. Upon trust to sell my real estate, with the discretion of absolute owners.

5. Subject to the foregoing trusts, the premises, including as well any purchased real estate as my unsold real estate devised in trust for sale, shall be held in trust for all and every my present or future children or child equally, if more than one, who shall attain twenty-one or, being daughters or a daughter shall attain that age or sooner marry with the consent of a guardian, and who shall be living at my death, or shall leave issue surviving me, and on failure of the foregoing trusts, in trust for J. K., of       , absolutely, or, if he be dead, for his executors or administrators for the benefit of his estate.

6. The shares of daughters are to be for their sole and sepa-

\* There are various clauses which are omitted from this will because they are implied by the law such as the power to give receipts to purchasers, to appoint new trustees, to maintain and educate children during their minority, and to wind up the testator's accounts. (See sects. 29—32.)

rate use free from the control of any husband, but so that they shall not dispose of them in any mode of anticipation.\*

7. Every present and future trustee and executor of my will, including the said ,† who may be an attorney or solicitor, shall be entitled to the same professional costs, charges and expenses as if he were not such trustee or executor.

8. I appoint the said C. D., E. F., and G. H. executors of this my will and guardians‡ of my children under age, and I bequeath to each of them £ for his trouble.

A. B.

Signed, etc. [*as in Form i, unless one of the forms of attestation numbered xviii to xxi should be necessary*].

Where a testator's property is of various kinds, and variously invested, but he has a wife as well as children, to provide for, and desires that the latter should have his property equally after their mother's death, the following form may be used:

#### VI. THE LIKE\* FOR BENEFIT OF WIFE AND CHILDREN.

This is the last will of me, A. B., of , made this day of [*month and year*].

1. I revoke all my previous testamentary instruments.

2. I bequeath to my wife £ ,§ to be paid fourteen days after my death, and all the furniture of my dwelling-house, and all the books, ornaments, works of art, household plate, linen, china and glass, and all wines, fuel, and other consumable household stores being therein, or belonging thereto.||

3. I devise and bequeath my real and personal estate not hereby otherwise disposed of, to C. D., of , E. F., of , and G. H., of , to hold upon the following trusts, to be performed by them, and the survivors or survivor of them, and the executors or administrators of such survivor.

4. Upon trust to retain or realize my invested personalty, and to realize my uninvested personalty, and (after paying my funeral and testamentary expenses, debts, and legacies, to invest the proceeds, with the sale moneys of my real estate, in or upon any public stocks, funds, shares or securities, not being Irish or foreign or the personal security of any person.

5. Upon trust, subject during my wife's life to her written

\* See note on these words in Form iii.

† Here insert the name of either of them who may be an attorney or solicitor; or, if neither of them is so, omit the words "including the said."

‡ The offices of trustee, executors, and guardian may each be held by different persons, but it is far better that they should be all united in the same persons.

§ A small sum for immediate use.

|| Here add any legacies you may desire to make of personal property, and any devises of real property either to wife or to any other. (See Form xxviii.)

consent, to sell my real estates, with the discretion of absolute owners.

6. Upon trust to pay the income of the trust premises, including the clear rents and profits of unsold and of purchased real estate to my wife during her life, she thereout discharging the lessee's liabilities in respect of my leaseholds.

7. Subject to the foregoing trusts, the trust premises, including as aforesaid, shall be held in trust for all\* and every my present and future children or child, equally if more than one, who shall attain twenty-one, or being daughters or a daughter, shall attain that age or sooner marry with the consent of a guardian, and who shall survive me, or die before me, leaving issue surviving me.†

8. The shares of each of my daughters are to be held upon trust for her sole and separate use for her life, free from the control of any husband, but so that she shall not dispose thereof in any mode of anticipation,‡ and after her death§ for such of her children and so as she may by deed or will appoint, and, so far as the same may be unappointed, for all her children equally, but so that no child shall take an unappointed share without bringing his or her appointed share into account.

9. On failure of the foregoing trusts, the trust premises, including as aforesaid, shall be held in trust for J. K., of , absolutely, or if he be dead, for his executors or administrators for the benefit of his estate.

[Here copy clauses 6, 7, and 8 from the preceding form.]

A. B.

Signed, etc. [as in Form i, unless one of the forms of attestation numbered xviii to xxi should be necessary].

\* If you wish to give your wife a power of distributing the property as she pleases, or giving it all to one child, let the clause stand thus.—

7. Subject to the foregoing trusts, the trust premises, including as aforesaid, shall be held in trust for such of my children, and so as my wife shall by deed or will appoint, and, so far as the same shall be unappointed, in trust for all and every my present and future children or child, equally if more than one, who attain twenty-one, or being daughters or a daughter shall attain that age or sooner marry with the consent of a guardian, and who shall survive me, or die before me leaving issue surviving me (the issue of a deceased child of mine to count as one child, and to take their parent's share equally), provided that no child shall take an unappointed share, without bringing his or her appointed share into account, and, on failure of the foregoing trusts, the trust premises, including as aforesaid, shall be held upon trust for J. K., of , absolutely.

† See the like clause in Form iii, and note.

‡ See note to Form iii on the restraint of anticipation.

§ If you desire to give your daughters power to appoint the income to a surviving husband for his life, insert here the following words, "if she shall by deed or will appoint to her husband for his life if he survive her, and subject to the foregoing trusts"—and then go on as above.

If the testator's youngest child will come of age in a few years, and he is not likely to have more, he may effect the distribution of his property, though it be of various kinds, without going through the form of giving a power of sale, which may be distasteful.

In the following form I have supposed the testator to have a wife, and have provided her with an annuity for her life. If he has no wife, clause two, except the gift to trustees and executors, and clause three and the three first words of clause four can be omitted.

VII. WILL GIVING ANNUITY TO WIFE, AND PROPERTY TO TRUSTEES IN TRUST FOR DIVISION AMONG CHILDREN AT TWENTY-ONE.

This is the last will of me, A. B., of \_\_\_\_\_, made this day of [*month and year*].

1. I revoke all my former testamentary instruments.

2. I bequeath to my wife £ \_\_\_\_\_, \* to be paid fourteen days after my death, and all the furniture of my dwelling-house, and all the household plate, books, works of art and ornaments, linen, china and glass, and all wines, fuel, and other consumable household stores being therein, or belonging thereto, and I give each of my trustees and executors herein-after mentioned, £ \_\_\_\_\_ for his trouble.

3. I direct my trustees to purchase from a well-established insurance company in good repute, an annuity of £ \_\_\_\_\_ † for the life of my wife, payable half-yearly, the first payment to be made on the usual quarter-day which shall first happen after my decease, with a provision for apportionment in case she shall die between the times of such payment, and to settle the same to her sole and separate use, free from the control of any husband, and without power of anticipation; and I direct that if my personal estate is not sufficient for this purpose, my real estate shall go in aid thereof.

4. Save as aforesaid, I devise and bequeath my real and personal estate to C. D., of \_\_\_\_\_, and E. F., of \_\_\_\_\_, upon the following trusts to be performed by them or the survivor of them, his executors or administrators.

5. Upon trust, during the infancy of any of my children, to employ a fair proportion of the income of the trust premises for his or her maintenance or education, and to divide the surplus among my adult children equally.

6. Upon trust, when my youngest child shall have attained twenty-one, to make an estimate as well as they can of the said trust premises, and of the several parcels thereof, and to divide and convey the same to and among all my children equally, my eldest son having the first choice, and then my

\* A small sum for immediate use.

† Yearly income.

younger sons, according to seniority, and then my daughters in like manner; provided that if any of my children shall die before the period of distribution, leaving issue then surviving, such issue shall count as one child, and shall be entitled equally, if more than one, to the share of his, her, or their parent, and such share shall be chosen for them by my trustees, if necessary, after all my adult children shall have made choice as aforesaid.

7. The share of each of my daughters is to be settled to her sole and separate use for her life, free from the control of any husband and without power of anticipation, with remainder to such of her children and so as she may by deed or will appoint, and in default of appointment, among her children equally, with a hotchpot clause, and on failure of these trusts, upon trust for such persons and in such shares as would be given under a distribution according to the Statutes of Distribution, if the whole were personalty.

8. I appoint the trustees of my will executors thereof and guardians of my children under age.

9. Every trustee and executor of my will, including the said  
 \*, who may be an attorney or solicitor, shall be entitled to the same professional costs, charges and expenses as if he were not such trustee or executor.

A. B.

Signed, etc. [*as in Form i, unless one of the forms of attestation numbered xviii to xxi should be necessary*].

42. Where a man with a wife and children has expiring interests in land (such as leases, or estates for the lives of other persons) and has also future interests (remainders or reversions) in land, he is usually advised to leave his landed property to trustees upon trust for sale. The object of the sale is to turn the expiring interests into money while there is anything left of them, so that the children may have the income after the mother's death, and to turn the future interests into money at once, so that the mother during her life may enjoy the income which, without a sale, she could not do. But, apart from the expenses of the sales, the operation usually results in a loss, especially as regards the future interests, which seldom\* fetch their full value. It may, therefore, suit the family better for the testator to leave the property just as it is and allow the expiring estate to be used up and the future estates to come in. For this purpose I have prepared the following form, giving all the personalty to the wife absolutely and giving her the landed property with

\* Here insert the name of either one of them who may be an attorney or solicitor, or, if neither of them is so, omit the words "including the said."

power to enjoy during her life that which is already in possession, or which comes into possession during her life, and giving what is left and what has yet to come into possession to the children after her, as she shall appoint and, so far as there is no appointment equally.

VIII. WILL GIVING PERSONALTY TO WIFE ABSOLUTELY, AND REALTY TO HER FOR LIFE AND AFTERWARDS TO CHILDREN.

This is the last will of me, A. B., of \_\_\_\_\_, made this day of [*month and year*].

1. I revoke all my previous testamentary instruments.

2. I give £ \_\_\_\_\_ to C. D., of \_\_\_\_\_, and £ \_\_\_\_\_ to E. F., of \_\_\_\_\_.

3. Subject to the preceding gifts I give to my wife Barbara, born Marshall, all my personal estate save my chattels real absolutely.

4. Subject as aforesaid I give to my said wife all my real estate, including chattels real, for her life, to enjoy present interests or such as shall come into possession during her life in specie, but not to convert future interests into money.

5. And after her death I give my said real estate, including chattels real, to such of my present and future children and so as my said wife may by deed, will or codicil appoint, and in default of appointment or so far as unappointed to all my present and future children equally, or child if but one, who shall attain twenty-one or, being daughters or a daughter, shall attain that age or sooner marry with the consent of a guardian, and who shall survive me or die before me leaving issue surviving me. And each of my daughters' unappointed shares shall be for her sole and separate use, but so that she shall not dispose thereof by any mode of anticipation.

6. On failure of the last preceding gift, I give my real estate, including as aforesaid, to X. Y., of \_\_\_\_\_, and if he be dead to his heirs, executors or administrators, according to the respective natures of the properties, for the benefit of his estate.

7. I appoint my said wife my executrix and guardian of my infant children.

A. B.

Signed, etc. [*as in Form i, unless one of the other forms of attestation numbered xviii to xxi, post, should be necessary*].

The following form is given as another example of what can be done in a simple case where a man's property is in such a shape that he can satisfy the demands of his family not only without directing a sale but without the intervention of trustees at all. By this will the testator provides for his wife by giving her a sum of money and a life estate in one parcel of land, and gives his eldest son another parcel of land, and

gives his youngest son the former parcel of land after his mother's death. Each son has also a legacy:—

**IX. WILL DISPOSING OF MONEY AND TWO FARMS FOR BENEFIT OF WIFE AND TWO SONS.**

This is the last will of me, A. B., of \_\_\_\_\_, made this day of [*month and year*].

1. I revoke all my previous testamentary instruments.

2. I bequeath to my wife £ \_\_\_\_\_, and all the furniture of my dwelling-house, and all the books, works of art, ornaments, household plate, linen, china and glass, and all wines, fuel, and consumable household stores being therein, or belonging thereto.

3. I bequeath to my son C. D. £ \_\_\_\_\_, and to my son E. F. £ \_\_\_\_\_.

4. I devise my lands, called Arrow Butts, in the county of Lancaster, with the appurtenances, to my said wife for her life, and after her death to my son E. F., and his heirs for ever.

5. I devise my lands, called Blackacres, in the said county, with the appurtenances, to my son C. D., and his heirs for ever.

6. All the residue of my real and personal estate I devise and bequeath to my son C. D.

7. I appoint my said wife and the said C. D. executrix and executors of this my will.

A. B.

Signed, etc. [*as in Form i, unless one of the other forms of attestation numbered xviii to xxi, post, should be necessary*].

The above will enables the testator's sons to dispose of their interest in the lands devised to them immediately upon his death. If the testator wishes to prevent the property from being disposed of until his sons respectively are dead, and his grandchildren are of full age, it will be better to use the following form, which gives to the sons of the testator estates for life only, and makes their sons, or, if they have no sons, their daughters, tenants in tail. By this means, if no sale takes place under the Settled Estates Acts, the property will be kept in the direct line of the family as long as it lasts, until the first, or some other tenant in tail, goes through the form of barring the entail by a disentailing deed.

**X. THE LIKE, GIVING AN ESTATE TAIL TO EACH SON.**

*Commence as in preceding form.*

*Clauses 1, 2, and 3, as in preceding form.*

4. I devise my lands called the Arrow Butts, in the county of Lancaster, with the appurtenances, to my said wife for life, and after her death to my son, E. F., for life, and after his



death to his first, and every other son successively in remainder, one after another, and the heirs of the body of each such son, every elder son, and the heirs of his body, taking before every younger son, and the heirs of his body, and, in default of such issue, to the daughter of the said E. F., if only one, and the heirs of her body, or, if the said E. F. shall have more than one daughter, then to such daughters respectively and the respective heirs of their bodies. And, on failure of the issue of each daughter, her share, as well original as accruing, shall go to the other or others equally, as aforesaid, and the heirs of her or their body, or respective bodies; and, on failure of all such issue, to me and my heirs for ever.

5. I devise my lands, called Blackacres, in the said county, with the appurtenances, to my son, C. D., for life, and after his death to his first and other sons successively in tail, with remainder to his daughter, if only one, and the heirs of her body, or his daughters, if more than one, as tenants in common in tail, with cross remainders in tail between them, as in the case of the preceding devise to the issue of my son, E. F., with remainder to me and my heirs for ever.

6. All the residue of my real and personal estate I devise and bequeath to my son C. D.

7. I appoint my said wife and my son C. D. executrix and executor of this my will.

A. B.

Signed, etc. [*as in Form i, unless one of the other forms of attestation, numbered xviii to xxi, post, should be necessary*].

The will of a person in business, who desires it to be carried on after his death for the benefit of his wife and children till one or more of the latter are capable of becoming his successors, requires care. The intervention of one or more trustees is required. If the testator leaves a wife, she should not be the sole trustee. A son should be joined with her, and, if possible, some older friend of the family. The trustees must also have a special authority to employ the testator's estate in carrying on the business, and they must be empowered to increase, diminish, or discontinue it, otherwise the property might be ruined under unforeseen circumstances. The trustees should be appointed executors, because, if other persons are appointed executors, there will be two sets of persons possessed of the statutory power of winding up the testator's accounts at their discretion. (See secs. 29—32.) If they are not appointed executors, there should be a clause giving them the same powers as if they were executors.

The other statutory powers given to trustees will be sufficient; but, as regards the appointment of new trustees, it is not sufficient that they should merely



have the *power*, they should be expressly required to exercise it. So also, with a view to secure that the trustees shall be persons who at least have the opportunity of personally inspecting the business, it is desirable to provide that upon any of them ceasing to reside in the neighbourhood of the business, he shall thereby be disqualified, and a new appointment shall take place.

However old the testator's widow may be, there is a possibility of her marrying again, especially if the business is thriving; and as there are no means of preventing her after-taken husband from interfering with the business if she were to continue a trustee, her trusteeship must be limited to her widowhood. After her other marriage she should have an annuity less than that which is given her during widowhood. These objects are kept in view in the following forms:—

#### XI. WILL OF A TRADESMAN PROVIDING FOR THE CONTINUANCE OF HIS BUSINESS.

This is the last will of me, A. B., of \_\_\_\_\_, made this day of [*month and year*].

1. I revoke all my previous testamentary instruments.

2. I bequeath to my wife £ \_\_\_\_\_, \* to be paid within fourteen days after my death, and the furniture of my house at \_\_\_\_\_, and all the books, works of art, ornaments, household plate, linen, china and glass, and all wines, fuel, and other consumable household stores, of which I shall die possessed.† I devise to each of my other trustees £ \_\_\_\_\_ for their trouble.

3. I devise my real and personal estate not hereby otherwise disposed of, unto and to the use of my wife as long as she shall continue a widow, C. D. of \_\_\_\_\_, and E. F. of \_\_\_\_\_, upon the following trusts to be performed by them, or the survivors or survivor of them, his executors or administrators, their or his assigns.

4. Upon trust to retain or realise my invested personalty, and to realise my uninvested personalty, and (after paying my funeral and testamentary expenses, debts, and legacies) to invest the proceeds, with the sale moneys of my real estate, in or upon any public stocks, funds, shares, or securities, not being Irish or foreign or the personal security of any person, or to invest them in the business in which I shall be engaged at my death, as hereinafter mentioned.

5. Upon trust [subject to the written consent of any son of mine who shall have attained twenty-one]; to sell my real estates, with the discretion of absolute owners.

\* A small sum for immediate expenses.

† Here add any legacies of personal property which you may desire to make either to your wife or any other person, and any specific devises of real property. (See Form xxviii.)

6. Upon trust, during my wife's widowhood, to pay to her the income of the trust premises, including the clear rents and profits of my unsold, and of purchased real estates, and to suffer her to continue my said business during her widowhood, with the powers hereinafter contained.

7. I empower my said wife to continue to occupy the premises in which the said business is carried on, or to take others which she may think more convenient. I authorise her to carry on the said business, and to employ in it such portion of the trust premises as she may think fit.

8. I give my wife during her widowhood the income arising from the said business while carried on by her, she thereout maintaining and educating such of my sons as shall be under age, and such of my daughters as shall be under age and unmarried.

9. In the event of my wife marrying again, the powers and benefits hereinbefore given to her are to cease, and she is to release her trust estate to her co-trustees, and, upon her so doing, I thenceforth give her an annuity of £        for her life, to her sole and separate use, payable quarterly, the first payment being made on the first usual quarter-day after such other marriage, but such annuity shall cease upon my wife attempting to alienate, or charge the whole, or any part thereof.

10. If any of my children, being sons shall attain twenty-one, or being daughters or a daughter shall attain that age or sooner marry with the consent of a guardian, during the widowhood of my wife, my trustees, subject to the foregoing dispositions, may raise out of the trust premises for each such child a sum not exceeding £        for his or her advancement in life, to be accounted for by such child on the distribution of my trust property, in manner hereinafter directed.

11. In the event of my wife dying, or marrying again, or becoming unwilling or unable to carry on the said business, my trustees shall carry on the same, with the same powers as are hereinbefore given to my wife, and with power to increase, abridge, or wholly discontinue the said business.

12. Subject to the preceding directions, my trustees shall hold the trust premises, and shall carry on the said business for the absolute use of all and every my children or child, equally if more than one, who shall attain twenty-one, or being daughters or a daughter shall attain that age or sooner marry with the consent of a guardian, and who shall survive me, or die before me leaving issue surviving me, the shares of my daughters being held during their lives to their sole and separate use, free from the control of any husband\* and without power of anticipation.

13. If, after the death or other marriage of my wife, my eldest son having attained twenty-one, or, in case of his neglecting or refusing to do so, any other of my sons having attained that age, shall give notice in writing to my trustees of

\* See the like clause in Form iii, and note.

his desire to undertake the management of my said business, my said trustees shall cause the same, together with the stock-in-trade, and the premises whereon the same shall be carried on, to be appraised, and such son shall have the option of purchasing the same, together with such stock-in-trade and premises; and the said business, stock-in-trade, and premises, shall be conveyed to him upon his giving security to the satisfaction of the trustees, for the payment to them of the appraised price by half-yearly instalments, until the whole shall be paid off, and such price shall be held by my trustees upon the same trusts as the rest of my trust estate.

14. Upon the refusal or neglect of any son, who has given such notice, to give such security, the said business shall be offered to my other sons in turn, according to seniority, on their attaining full age, and, if none of them buys, then to my daughters in like manner; and in the event of all of my children having attained twenty-one and refusing to buy the business as aforesaid, my trustees may sell or wholly discontinue the said business.

15. I appoint my said trustees executrix and executors of this my will, and I direct that any future trustees, whether appointed before or after my death, shall have the same powers as if they were executors. I appoint my wife during her widowhood, and after her death, or other marriage, the said C. D. and E. F., guardians of my children during their respective minorities.

16. Every trustee of this my will, including the said ,\* who may be an attorney or solicitor, shall be entitled to the same professional costs, charges, and expenses as if he were not such trustee.

17. I direct that any present or future trustee who shall marry my widow, or shall cease to reside in the town of , or within fifty miles therefrom, as the crow flies, shall be thereby incapacitated from continuing a trustee, and that every vacancy occurring from any cause in my lifetime, or after my death shall be supplied by the appointment of a fit substitute resident as aforesaid,† such appointment to be made by my wife during her widowhood; and after her death, or other marriage, by the persons thereto empowered by law.

A. B.

Signed, etc. [*as in Form i, unless one of the other forms of attestation, numbered xviii to xxi, post, should be*

\* Here insert the name of either of them who may be an attorney or solicitor; or, if neither of them is so, omit the words "including the said."

† Although the law empowers the surviving or continuing trustee, or the executors or administrators of the survivor to fill up the vacancy, yet an express direction is necessary to compel them to do it. This clause is also necessary for another reason, namely, to — the widow the appointment during widowhood.

## XII. A SHORTER FORM, HAVING THE LIKE OBJECTS.

*Commence as in the last form, and copy 1 and 2 from last form.*

3. I direct my real estate to be considered as personalty for the purposes of this my will; and I devise my real and personal estate not hereby otherwise disposed of, unto and to the use of my wife as long as she shall continue a widow, C. D., of \_\_\_\_\_, and E. F., of \_\_\_\_\_, upon the following trusts to be performed by them, or the survivors or survivor of them, and the executor or administrator of such survivor.

4. Upon trust to sell and vary the investments of my property, with the discretion of absolute owners.

5. Upon trust to allow my wife during her widowhood to receive the income of my trust estate, and to carry on the business in which I shall be engaged at my death, with the same discretion as I might have used myself, and for that purpose to employ any portion of my trust estate by way of capital, and to occupy the premises in which my said business is carried on, or to take any others which she may think more convenient.

6. I give my wife during her widowhood the income of the said trust estate, and of the said business, she thereout keeping repaired and insured the business premises, and suitably maintaining and educating my sons till twenty-one, and my daughters till marriage.

7. In the event of my wife marrying again, her said income and the powers hereinbefore contained are to cease, and she is to release her trust estate to her co-trustees, and, upon her so doing, I give her an annuity of £ \_\_\_\_\_ per annum, payable quarterly (the first payment being made on the usual quarter-day next after the marriage), to her sole and separate use, but to wholly cease on her attempting to charge, or transfer the whole, or any part thereof.

8. After my wife's death, or other marriage, my trustees, subject to the directions hereinbefore contained, shall hold my trust estate, and carry on the said business with the same discretion as I might myself use, in trust for the absolute use of all and every my children or child, equally if more than one, who shall attain twenty-one, or being daughters or a daughter, shall attain that age or sooner marry with the consent of a guardian, and who shall survive me, or die before me leaving issue surviving me, the shares of my daughters being for their sole and separate use during their lives, free from the control of any husband and without power of anticipation.

9. After my wife's death or other marriage, such one of my sons, as having attained twenty-one, shall first give notice in writing to my trustees that he desires to take to the said business, shall be entitled to have the same, and the stock-in-trade and business premises, conveyed to him, upon his giving security to the satisfaction of my trustees to pay off in half-yearly instalments the price at which, previously to the giving of such security, my trustees shall have had the said business, stock-in-trade, and

premises appraised, such price to form part of my trust estate. Upon the refusal or neglect of such son to give such security, the said business shall be offered to each of my other sons in turn, according to seniority, on their attaining twenty-one; and if they refuse or neglect, then to my daughters in turn in like manner.

10. In the event of all my children having attained twenty-one, and refusing to buy the said business as aforesaid, my trustees may sell or wholly discontinue the said business.

[*Here copy 15, 16, and 17 from the last preceding form.*]

Signed, etc. [*as in Form i, unless one of the other forms of attestation, numbered xviii to xxi, post, should be necessary.*]

If a testator's property consists only of personalty, or can be converted into personalty, and he merely desires to give legacies, the following form will be found useful. (It can easily receive alterations or additions by reference to the general forms given under No. xxviii.)

### XIII. PRIVATE AND CHARITABLE LEGACIES, WITH BEQUEST OR RESIDUE TO WIFE

This is the last will of me, A. B., of \_\_\_\_\_, made this day of [*month and year*].

1. I direct my real estate, including leaseholds, to be sold and converted into personalty.

2. I give the following private legacies :

To my daughter, C. D., £

To my daughter, E. F., £

To my partner, G. H., £

To my servant, T. J., £

To each of my trustees and executors for their trouble, £

3. Legacies to females are to be to their sole and separate use, free from the control of any husband, and subject to restraint against anticipation.\* If any legatee shall die in my lifetime, his or her legacy shall go to his or her executors or administrators, for the benefit of the estate of such legatee.

4. I give the following legacies in trust for the following institutions or societies, to be paid out of pure personalty in priority to my other gifts,† to the treasurers or persons acting as treasurers thereof respectively for the time being, whose receipt shall be a sufficient discharge :

For the Nottingham Infirmary, £

For the British Orphan Asylum, £

For the Royal Dramatic College, £

For the British School at \_\_\_\_\_, £

\* See note on these words in Form iii.

† This is to prevent the legacies being void under the Acts concerning charities.

All the residue of my estate I bequeath to my wife for her sole and separate use, and subject to restraint on anticipation.

I appoint K. L. and M. N. trustees and executors of this my will.

A. B.

Signed, etc. [*as in Form i, unless one of the other forms of attestation, numbered xviii to xxi, post, should be necessary*].

In Form vi the testator left a share of his estate to trustees on trust for each daughter to pay her the income for life, and after her death to give the principal among such of her children, and so as she might by deed or will appoint, otherwise among them all equally. Form vii contains a direction for a settlement on each daughter to the like effect. The following form is a will of a married woman made in execution of these powers,\* and appointing the proportions in which the trust fund shall be divided among her children.

#### XIV. WILL OF MARRIED WOMAN MAKING AN APPOINTMENT TO HER CHILDREN UNDER A POWER IN A WILL.

I, A. B., wife of C. D., of \_\_\_\_\_, in exercise of my power under the will of my father, E. F., appoint that the trust premises therein comprised shall, after my death, be held in trust for my children in the following proportions, namely, one-half for my child S., and a quarter for each of my children, T. and W. Signed by me this \_\_\_\_\_ day of [*month and year*].

A. B.

†Signed, etc. [*as in Form i, unless one of the other forms of attestation, numbered xviii to xxi, post, should be necessary*].

#### XV. ANOTHER FORM GIVING EACH CHILD A SPECIFIC PORTION OF THE PROPERTY.

I, A. B., wife of C. D., of \_\_\_\_\_, in exercise of my power under the will of my father, E. F., appoint that the trust premises comprised in such power shall, after my death, be held

\* Even if the power only expressed that she might appoint by deed, she might still appoint by will to certain favoured parties, as children, creditors, and charities. Whereas, if she had only power to give by will, she could not exercise it by deed.

† This and the two following forms will serve for a deed as well as for a will. A deed may be used if the power (as is the case with the power created by Form vi) is capable of being so executed. [*See note preceding this form.*] The only difference is in the form of execution. Instead of "signed by me" say "as witness my hand and seal," and then A. B. should put a seal or wafer after her signature, and putting her finger thereon, should say, "I deliver this as my deed," and the witnesses, who should be present while this is done, should sign a form of attestation of this kind:—"Signed, sealed and delivered by A. B., in the presence of us."

in trust as follows, namely, that portion which is invested in £3 per cent. Consolidated Bank Annuities for my child S.; that portion which is invested in a mortgage on Blacklands, in Yorkshire, for my child T.; and that portion which is invested in Railway Debentures for my son W. Signed by me this day of [month and year].

A. B.

Signed, etc. [*as in Form i, unless one of the other forms of attestation, numbered xviii to xxi, post, should be necessary*].

If, in using Form vi, clause 8, the words given in the note are inserted so as to give the daughter a power of appointing the income to a husband surviving her for his life, the following form of appointment may be used.

#### XVI. WILL OF MARRIED WOMAN APPOINTING INCOME TO HER HUSBAND FOR LIFE.

I, A. B., wife of C. D., of , in exercise of my power under the will of my father, E. F., appoint that the income of the trust premises comprised in such power shall be paid to my husband, if he shall survive me, for his life. Signed by me this day of [month and year].

Signed, etc. [*as in Form i, unless one of the other forms of attestation, numbered xviii to xxi, post, should be necessary*].

#### FORMS OF ATTESTATION.—(See secs. 4—7.)

##### XVII. WHERE THE TESTATOR SIGNS IN THE PRESENCE OF WITNESSES.

Signed by A. B., of , as his last will in the presence of us, being present at the same time, who, at his request, in his presence, and in the presence of each other, subscribe our names as witnesses.

C. D. [*description and address*].

E. F. " "

##### XVIII. WHERE THE TESTATOR ACKNOWLEDGES IN THE PRESENCE OF WITNESSES A WRITING PREVIOUSLY SIGNED.

Acknowledged [*continue as in the foregoing form*].

C. D. [*description and address*].

E. F. " "

##### XIX. WHERE ANOTHER SIGNS FOR THE TESTATOR.

Signed by G. H., of , for the said A. B., the testator, as his last will, by his direction, in his presence and in the presence of us, who, at his request, in his presence and in the presence of each other, subscribe our names as witnesses.

C. D. [*description and address*].

E. F. " "

## XX. WHERE THE TESTATOR SIGNS BY A MARK.

Signed by A. B. as his last will, after being read over to him, by making his mark in the presence of us, etc. [*follow Form xvii*].

## XXI. WHERE THE TESTATOR IS BLIND.

Signed by the said A. B. as his last will, after being read over to him, because he is blind, in the presence of us, etc. [*follow Form xvii*].

## XXII. MARGINAL ALTERATION MADE AFTER EXECUTION.

It is my will that the words " " in the third line, from the top of the preceding page, and through which I have drawn my pen, be omitted from my will, and that in the fourth line from the end of that page, the words " " be substituted for the words " " through which I have drawn my pen; and that in the second line from the end of this page, the words " " be inserted after the word " ".

\*A. B. [*testator*].

†Signed by A. B. in the presence of us, being present at the same time, who, at his request, in his presence, and in the presence of each other, subscribe our names as witnesses.

C. D. [*description and address*],  
E. F. " "

## XXIII. ANOTHER MEMORANDUM OF ALTERATIONS MADE AFTER EXECUTION.

†I, A. B., having made with my own hand [*or have caused to be made*] in this my will the alterations hereinafter specified, namely, in page one, line ten, the words " " are omitted; in page two, line eleven, the words " " are inserted after the word " "; and in page three, line twelve, the words " " are omitted, and the words " " substituted for them, and I confirm my will as so altered.

A. B. [*testator*].

Signed, etc. [*as in the last form*].

\* The testator may put his own initials to the corrections, and sign the memorandum, as well as the witnesses.

† If the testator only acknowledges his signature, or if he gets some one to sign for him, the forms of attestation numbered xviii or xix can be used, as the case may be.

‡ This, like the preceding, should be written on the same paper with the will.



## CODICILS.

## XXIV. CODICIL APPOINTING A TRUSTEE AND EXECUTOR IN PLACE OF ONE DECEASED.

I, A. B., of \_\_\_\_\_, declare this to be a codicil to my will dated\*

1. I appoint G. H., of \_\_\_\_\_, trustee and executor in the place of E. F., and direct my will to be read as if the name of the said G. H. had been throughout substituted for the name of the said E. F.

2. I bequeath to the said G. H., accepting the trusts, the sum of £ \_\_\_\_\_ bequeathed by my said will to the said E. F.

3. In all other respects I confirm my said will.

*[To be executed and attested as in case of a will.]*

## XXV. CODICIL REVOKING A WILL.

I, A. B., of \_\_\_\_\_, hereby revoke my will dated†

*[To be executed and attested as a will.]*

## XXVI. CODICIL REVIVING A WILL PREVIOUSLY REVOKED.

Whereas I, A. B., of \_\_\_\_\_, have revoked my will bearing date \_\_\_\_\_. Now I hereby annul such revocation, and declare my said will to be valid and subsisting.

*[To be executed and attested as a will.]*

## XXVII. CODICIL REVIVING A WILL REVOKED BY MARRIAGE.‡

Whereas I, A. B., of \_\_\_\_\_, made my will on or about the \_\_\_\_\_ day of \_\_\_\_\_, and have since married, whereby the said will is revoked. Now I hereby declare the same to be my valid and subsisting will, as if made after marriage.

*[To be executed and attested as a*

## XXVIII. CODICIL REVOKING, ALTERING, AND ADDING LEGACIES.

I, A. B., of \_\_\_\_\_, declare this to be a codicil to my will dated \_\_\_\_\_

1. I revoke the legacies given in my said will to C. D., E. F., and G. H., and instead thereof, I give £ \_\_\_\_\_ to C. D. and £ \_\_\_\_\_ to E. F.

2. I give a legacy of £ \_\_\_\_\_ to I. J.

3. In other respects I confirm my said will.

*[To be executed and attested as a will.]*

\* See note to next form.

† If you have not the will with you, and cannot identify it by its date, say, "made on or about the month of \_\_\_\_\_, in the year \_\_\_\_\_, and deposited by me with X. Y. [or in my iron chest at \_\_\_\_\_]." Or you may refer to it as "the will prepared for me by Mr. C. D., of \_\_\_\_\_, solicitor, in or about the year \_\_\_\_\_."

‡ See sec. 9.

There follow a few forms of devises, bequests, and legacies, in addition to those scattered through the preceding wills:—

XXIX. SHORT FORMS OF DEVISES, BEQUESTS, AND LEGACIES,  
TO BE USED IN THE FRAMING OF WILLS.

*To executors.*—To each of my [trustees and] executors as an acknowledgment for his trouble £           , and to the said C. D. individually £           .\*

*To servants.*—To each of the persons who shall be my domestic servants at the time of my decease £           † and mourning at the discretion of my executors.

*Another form.*—To each of the persons who shall be my domestic servants having lived with me a year at the time of my death £           . [See note to last form.]

*Paraphernalia, &c.*—I give my wife her paraphernalia and personal ornaments.

*Furniture to wife during her widowhood.*—I bequeath to my wife during her widowhood the use of all my furniture, plate, linen, glass, china, books, ornaments, works of art, musical instruments and other chattels of the like nature which shall be in and about my dwelling-house at my death, she signing a complete inventory and giving the same to my trustees,‡ and after her death or other marriage I give the said property to absolutely.§

*General bequest of all Government stock and shares in companies.*—I bequeath to A. B. all money of which I shall die possessed in public stocks or funds or other Government securities, also all my shares, stock, or debentures of or in any public company or trading corporation.

*Bequest of all stock and shares of a certain kind.*—I give to C. D. all my Three and a Quarter Per Cent. Bank Annuities which shall be in my name at my death; and I give to E. F. all the shares to which I shall be entitled at my death in the London and North Western Railway Company, the calls made on which up to such time shall be paid out of my estate.

*Devise to son of mortgaged lands, free of mortgage.*—I devise to my son Thomas my lands at Blackhampton, lately bought of

\* The first-mentioned sum will only be given to such of the persons appointed executors as accept the office, but C. D. will take the latter sum whether he accepts the office or not. Neither must attest the will.

† Instead of £            you may say “one year’s wages besides what may be due.”

‡ Or, if she is one of the trustees, say “to my other trustees.”

§ If there is no gift to another person on her death or marriage the wife can dispose of the property, though in words only given to her during life or widowhood.

the trustees of S. T., for all my estate therein, and I direct the mortgage debt therein to be paid out of my personal estate, and, if that is insufficient, out of my other real estate.

*Devise to son of purchased land, free from lien for the balance of purchase money.*—I devise to my son Henry my lands known as Plas Tudor, in the county of Salop, for all my estate therein, free of any lien for unpaid purchase money or any mortgage thereon, and I direct such lien or mortgage to be discharged out of my personal estate or, if that is insufficient, out of my other real estate.

*Devise to a man and his wife and a third person so that the two former shall each have one third share, instead of one half share being divided between them.*—I give the Wentworth Brewery and the buildings and five acres of land or thereabouts occupied therewith at Wentworth, in the county of \_\_\_\_\_ in fee-simple to C. D., of \_\_\_\_\_, and Catharine his wife, and E. F., of \_\_\_\_\_, in equal third\* shares, one share to each person as tenants in common.

*Devise to a man and his children.*—I give my lands of Marl-acre, 130 acres or thereabouts, in fee-simple to C. D., of \_\_\_\_\_, and to his children as tenants in common, one half to C. D. and the other half to his children,† the share of any child who dies in my life-time being taken by his children (if any) as tenants in common.

*Bequest of specific shares and sums of stock.*—I give to C. D. the sum of £ \_\_\_\_\_ Consolidated Bank Annuities now standing in my name; I give to E. F. ten shares, numbered 1001 to 1010 in the London and North-Western Railway Company, the calls on which up to my death are to be paid out of my estate.‡

*Bequest of a share in partnership.*—I give to my sons C. D., E. F., and G. H., equally to be divided between them to the share to which I shall be entitled at my death in the business of \_\_\_\_\_, now carried on by me in partnership with \_\_\_\_\_, together with my share or interest in the business premises, plant, machinery, fixtures, utensils, stock, book-debts, good-will and effects connected therewith.

\* In the absence of some such expression, the married couple will only take a quarter each; the other half going to E. F.

† If you do not say what portion the father is to take, he will take no greater share than each of his children.

‡ If the testator has parted with any of the above articles during his lifetime the legatees will take nothing by means of his legacy; and if he has parted with a portion they will only take the remainder. If it is his desire that the legatees should have an equivalent for the whole or part so disposed of he should add the following words: "and if I should not at my death be possessed of such stock and shares I direct my executors out of my general personal estate to purchase such stock and shares as to make up the deficiency for the said C. D. and E. F."

*Bequest of rights under another's will.*—I give to C. D. all the benefits to which I am entitled under the will of E. F.\*

*Bequest of a bond debt.*—I give to C. D. the sum of £ now owing to me on the bond of E. F., and all interest which shall be due thereon at my death.

*Bequest of weekly allowance to a spendthrift and his family.*—I direct my trustees to purchase the sum of £ stock in the Three Per Cent. Consolidated Bank Annuities, and to pay out of the dividends thereof the weekly sum of £ to C. D. until his death, or until he shall become bankrupt, or do any act whereby the said sum might be assigned or charged; and after any such determination of the interest of the said C. D., I direct that the said funds shall be held by my said trustees in trust, to apply the dividends thereof to the maintenance of the wife and children of the said C. D., and after the death of him and his wife, to divide the said fund equally among such of his children as, being a son or sons, shall attain twenty-one, or, being a daughter or daughters, shall attain that age or marry.

*Bequest of a sum to be laid out in an annuity.*—I direct my trustees [or executors] to lay out the sum of £ in purchasing of the Government, or of one of the following Insurance Companies, namely, the , the , or the , an annuity for C. D., for his life.

*Another form more fully securing the annuity.*—I direct my trustees [or executors] to lay out the sum of £ in purchasing in their names of the Government, or of one of the following Insurance Companies, namely, the , the , or the , an annuity for C. D., to be paid to† him till his death, or until he shall become bankrupt or do any act whereby the said annuity may be released, assigned, or charged, and after any such determination of the interest of the said C. D. during his life, I direct the said annuity to be applied to the maintenance of the‡ wife and children of the said C. D. And I direct that the said C. D. is to have no option to accept from my trustees the value of the said annuity in lieu thereof.

*Bequest to creditor in addition to debt.*—I bequeath to C. D. £ , but not in satisfaction of the sum of £ , which I owe him.§

*Bequest forgiving a debtor his debt and interest.*—I forgive C. D. the debt of £ which he owes me, and all interest and arrears of interest that may be due thereon up to the day

\* This will be of no use if the testator dies before E. F., unless E. F. was his father. (See s. 19.)

† If the annuitant is a female, say, "to her for her sole and separate use, and without power of anticipation, till her death," etc., and change the *him*, or *his* into *her*.

‡ If the annuitant is a female, omit the words "wife and."

§ Under this form your creditor will take both the debt and the legacy.

of my death, and bequeath to him all documents securing the said debt ; and in case he should die before me, this bequest is to endure in favour of his executors or administrators, for the benefit of his estate. [See sec. 25.]

*Another form where the debt is secured by mortgage.*—I forgive C. D. the principal and interest, and arrears of interest, which he shall owe me at the time of his death, and which is secured by a mortgage of his estate of Dale. [See sec. 25.)

*Residuary bequest of personalty [to follow other bequests].*—And all the residue of my personal estate of which I shall be possessed, or over which I shall have any power of appointment at my death, I give to my wife C. D.

*The like where the children are not adult.*—To all and every, my present or future child or children who shall attain twenty-one, or, if daughters, attain that age or marry, who shall survive me, or die before me leaving issue surviving me ; such children of mine to take equally, if more than one, and the shares of daughters to be to their sole and separate use, without power of anticipation.

## CLASS XII.—MISCELLANEOUS FORMS.

### I. STATUTORY DECLARATION IN LIEU OF OATH.\*

I, E. F., of [*residence and occupation*], do solemnly and sincerely declare as follows:—

That I am the widow of J. F., late of Chipping-Norton, in the county of Oxford, horse-dealer, who died on or about the day of [*month and year*].

That our daughter A. B., late the wife of J. B., of Chipping-Norton aforesaid, manufacturer, survived her father, the said J. F., by the space of one week. ●

That I was present and saw the said A. B. sign, seal, and as her deed deliver the deed† now shown to me and marked *A*, and that the name A. B., signed at the foot thereof, is the proper handwriting of the said A. B., and that the names of C. D. and E. F., signed as the names of witnesses underneath the attestation to the said deed, are in the proper handwriting of the said C. D., and of me, the said E. F., respectively.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

E. F.

Declared and subscribed at        this        day of [*month and year*], before me,

U. V.,

A justice of peace for the [*county*] of

### II. ‡NOTICE BY EXECUTORS REQUIRING CREDITORS TO SEND IN THEIR CLAIMS WITHIN A CERTAIN TIME.

(22 and 23 Vict., c. 35, s. 29.) ●

A. B. deceased.

Notice is hereby given that all persons who are creditors of, or have claims against, the estate of A. B., late of No. 31 Blank

\* This may be made before magistrates or other persons authorized to administer oaths, and requires a 2s. 6d. stamp.

† There should be written on the back of the deed words to the following effect, and the person before whom the declaration is made should sign them, "This is the deed marked *A* referred to in the declaration of E. F., made before me this        day of [*month and year*]."

‡ This notice should be published in the *London Gazette* and some London daily papers and, if the testator lived in the country, in local papers. Six weeks or two months will usually be a reasonable time to fix and a month is often treated as sufficient, but each case depends on its own circumstances (see *Wood v. Weightman* 13 Eq. 434; *re Bracken*, 43 Ch. D. 1). ●

Street, in the City of Westminster, upholsterer, deceased (who died on the       day of [*month and year*], and whose will was proved on the       day of [*month and year*], in the Court of Probate, by C. D., of No. 1 Bank Chambers, Threadneedle Street, London, merchant, and E. F., of "The Baptistry," Huntingdon, minister of the Gospel, the executors therein named), Are required on or before the 15th day of March, 18—, to send in particulars of their claims against the said estate to the said C. D. or to the Messieurs X and Y., of No. 5, Force-pump Court, Temple, London, solicitors to the said executors; And that after the said 15th day of March, 18—, the executors will distribute the assets of the said testator, having regard only to the claims of which the executors shall then have notice.

Dated the 1st day of January, 18—.

X. and Y.,

“ 5 Force-pump Court, Temple,  
Solicitors to the Executors.

### III. AGREEMENT BY A MANUFACTURER MAKING ONE A SOLE CONSIGNEE WITHIN CERTAIN LIMITS.

Agreement made this       day of [*month and year*], between A. B., of       , manufacturer of patent starch, and C. D., of       , commission agent.

1. The said A. B. for himself, his executors and administrators, agrees that upon receiving a written order from the said C. D., the said A. B., his executors and administrators, will from time to time, at his warehouse aforesaid, and according to such order, supply to the said C. D. the patent starch as now manufactured and sold by the said A. B. in packets of 1 lb., 2 lbs., 3 lbs., and 6 lbs.

2. The said patent starch is to be delivered in packets of 1 lb., 2 lbs., 3 lbs., or 6 lbs. as ordered by the said C. D. and invoiced to him at four pence the pound, and the said C. D. is to account and pay for the same at that price every three months, beginning from the date hereof, less 20 per cent.

\* 3. The said A. B., his executors and administrators shall not be bound to supply more than 500 lbs. on any one day, nor more than 1500 lbs. in any one week, without a week's notice in writing with a written order from the said C. D., nor shall the said A. B., his executors or administrators, be bound to continue supplying starch as aforesaid after 10,000 lbs. shall have been delivered and shall remain unaccounted for, whether the said period of three months shall have elapsed since such delivery or not.

4. Together with every 50 lbs. of the said patent starch delivered as aforesaid, the said A. B., his executors and

If the deceased died intestate, say "who died intestate and letters of administration of whose personal estate and effects were on etc. granted by the Court of Probate to C. D. of etc.," and substitute "intestate" for "testator" and "administrator" for "executors." See ante Class xi, s. 29.

administrators shall deliver to the said C. D. one show-card or advertisement such as are now exhibited by the said A. B., and twelve copies of the pamphlet entitled "The Virtues of Starch."

5. The said A. B. his executors and administrators shall not sell the said patent starch at less than four pence the pound or make any rebate or allow any discount by which the price shall be reduced below that amount, and for every sale made in contravention of this clause shall pay to the said C. D. by way of liquidated damages the sum of £50, and, without prejudice to the right to such damages, the said C. D. may determine this agreement on breach of this clause.

6. The said C. D. shall not engage directly or indirectly in the sale of starch for any other person than the said A. B. his executors or administrators, and he and they may determine this agreement for breach of this clause.

7. In the event of failure on the part of the said C. D. for one calendar month to account and pay as aforesaid, the said A. B. his executors or administrators may, by notice in writing, determine this agreement from the date of delivering such notice.

8. During the continuance of this agreement the said A. B., his executors or administrators shall not, without the written consent of the said C. D., employ, nor shall knowingly suffer any other person to sell on commission or otherwise for them the said starch beyond a radius of three miles from the General Post Office, and in case of a breach of this clause the said A. B., for himself his executors and administrators undertakes to pay the said C. D. the sum of £200 by way of agreed and liquidated damages, and, without prejudice to the right to such damages, the said C. D. may determine this agreement on breach of this clause.

9. In the event of this agreement being determined by the said A. B., his executors or administrators, the said C. D. may at any time within one calendar month after notice of such determination, return to the warehouse aforesaid any unsold starch in good and saleable condition, in packets as aforesaid in like condition, and shall be entitled to credit for the same at the invoiced price.

10. Subject as aforesaid this agreement shall continue in force for seven years from the date hereof, but subject to determination at any time by six months' previous notice in writing from either of the said parties to the other of them, or by the said C. D. to the executors or administrators of the said A. B.

In Witness whereof the said parties have hereto set their hands the day and year first above written.

A. B.  
C. D.

Signed by the said parties in the presence of me,

E. F.

and occupation.]



The commonest instance of the employment of an agent to be paid by commission is where one is engaged by another to find a purchaser; the latter having to deliver or transfer the legal property in the thing sold.

The following agreement is one in which a stipulation for fixed wages would be unsuited. The terms fixing the events on which the commission is payable are highly favourable to the agent, and are taken, with a slight change of arrangement, from the skilfully drawn circular issued by the plaintiff in *Lara v. Hill*, 15 C. B. (N. S.) 45, which was an action claiming commission.

#### IV. AGREEMENT EMPLOYING ONE TO SELL A MANOR ON COMMISSION.

A. B., of 13 Davenport Street, Soho, estate agent, undertakes to use his endeavours for finding a purchaser for the Manor of Earl's Norton, in the county of \_\_\_\_\_, the property of C. D., of Norton House, esquire, for a minimum price of £20,000, at a commission of one-and-a-half per cent. on that sum and three per cent. on all beyond it.

The commission becomes payable on the adjustment of terms between the contracting parties if any particulars, whether in writing or not, have been given by the said A. B.'s office or any communication has been made or information has been derived from that office, however and by whomsoever the negotiation may have been conducted; and notwithstanding that the business may have been subsequently taken off the books of the said A. B. or the negotiations may have been concluded in consequence of communications previously made from other agencies, or information otherwise derived, and the principal may have made himself liable to other agents.

No accommodation that may be offered as to the time of payment is to retard the payment of commission.

C. D. engages A. B. on the above terms.

"Dated this \_\_\_\_\_ day of [*month and year*].

A. B.  
C. D.

Witness G. H.  
[*Residence and occupation.*]

#### V. APPOINTMENT BY A SHAREHOLDER IN A COMPANY OF A PROXY TO VOTE AT A MEETING.\*

The Incandescent Gas Company, Limited.

I, A. B., of \_\_\_\_\_, in the county of \_\_\_\_\_, being a member

\* This form, taken from Table A of the Companies Act, 1862, must bear a penny stamp, which, if adhesive, must be cancelled by the person signing, at or before doing so. If the instrument authorized the proxy to vote "at any meeting of the Company that might be held in the year 18—" (the alternative words given in Table A)

of the Incandescent Gas Company, Limited, and entitled to a vote [*or*        votes], hereby appoint C. D., of       , as my proxy to vote for me and on my behalf at the ordinary [*or* extraordinary, *as the case may be*] general meeting of the Company to be held on the        day of       , and at any adjournment thereof.

As Witness my hand this        day of [*month and year*].

A. B.

Signed by the said A. B. in the presence of

E. F.

## VI. ATTESTATIONS.

The following are the forms of attesting the execution of deeds. They may be made applicable to documents not under seal, by omitting the words "sealed and delivered."

### i. ATTESTATION BY A WITNESS WHO SEES BOTH OR ALL OF THE PARTIES EXECUTE.\*

Signed, sealed and delivered by the parties hereto in the presence of

G. H. [*Residence and occupation.*]

### ii. ATTESTATION OF EXECUTION BY SOME OR ONE ONLY.

Signed, sealed and delivered by the said A. B. [and C. D.] in the presence of

G. H. [*Residence and occupation.*]

### iii. ATTESTATION OF EXECUTION BY AN ILLITERATE PERSON.

Signed, sealed and delivered by the said A. B., the same having been previously read over to him, in the presence of

G. H. [*Residence and occupation.*]

### iv. THE LIKE OF EXECUTION BY A BLIND PERSON.

[*Follow the above; but after "him," insert "because he was blind."*]

the duty would be 10s. (See "Stamps.") Where one company is a shareholder in another company (which may happen where the Memorandum of the former expressly or by implication authorizes such an investment) the proxy may be any member of the body corporate which owns the shares, though not personally a shareholder in the company in which the shares are held. The proxy will then be regarded as the owner of the shares held by the body appointing him; though not as the owner for the purpose of transferring them. He may vote in respect of them. See 51 & 52 Vict. c. 48 (amended as to a mistake on the form by 52 & 53 Vict. c. 37) for forms of General Appointment of Proxy, Revocation of General Proxy, and Special Appointment of Proxy.

\* Where there are more witnesses than one, this form will not require alteration, for each witness may sign it. •

## v. THE LIKE OF EXECUTION BY A DEAF AND DUMB PERSON.

Signed, sealed and delivered by the said A. B., who, being deaf and dumb, but capable of reading, read over the\* above-written indenture, and appeared to understand the same, in the presence of

G. H. [*Residence and occupation.*]

## vi. WHERE THERE ARE INTERLINEATIONS AND ERASURES.

Signed, sealed and delivered by the said A. B. (the words [*mentioning them*] having been previously interlined between the words [*mentioning them*] in the tenth line of the first skin, and the words [*mentioning them*] having been erased in the twelfth line of the second skin and the words [*mentioning them*] having been written over the erasure) in the presence of me,

G. H. [*Residence and occupation.*]

## vii. ATTESTATION OF EXECUTION BY ANOTHER PARTY AFTER THE EXECUTION ATTESTED IN THE PRECEDING FORM.

Signed, sealed and delivered by the said C. D. (the alterations mentioned in the attestation of the execution by A. B. having been previously made) in the presence of me,

J. K. [*Residence and occupation.*]

## viii. WHERE ONE EXECUTES UNDER A POWER OF ATTORNEY.

Signed, sealed and delivered by E. F., as the attorney of the said A. B., in the presence of

G. H. [*Residence and occupation.*]

## ix. ATTESTATION OF THE EXECUTION BY A PARTY FOR HIMSELF AND ALSO AS ATTORNEY FOR ANOTHER.

Signed, sealed and delivered by the said A. B. in his own name and as his own deed, and afterwards as the attorney for the said C. D. in his name and as his deed in the presence of

G. H. [*Residence and occupation.*]

\* If the attestation is written on the back, instead of "above written," say, "within written."

## CHAPTER XIII.—STAMPS.

BUSINESS documents are called “instruments.” Some instruments are exempt from stamp duty. Some instruments which require a stamp may be stamped at any time on payment of the duty and a penalty, and, in some cases, interest on the duty also. Others can only be stamped within a limited time on payment of the duty and the penalty. Others, again, are worthless unless they bear a proper stamp when signed or issued. On some the stamp must be impressed, on others it may be adhesive, and some instruments are required to bear a stamp of a sort specially set apart for that sort of instruments.

There is also a great deal of variety in the rules for fixing the amount of the duty. Instruments of some classes bear one uniform duty whatever is the amount with which they deal; with some the duty varies according to the value dealt with, and is called *ad valorem* duty; with some it varies according to the length of time for which the instrument is to operate; with others according to the number of bargains contained in the instrument, and sometimes the duty on one instrument depends on the contents of another and sometimes on the duty paid on it.

Those who regard simplicity as the soul of genius will be disappointed with the stamp laws.

The following are—

### EXEMPT FROM ALL STAMP DUTIES.

Transfers of shares in the Government or Parliamentary stocks or funds.

Instruments for the sale, transfer, or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel or part thereof or share or interest therein.

Instruments of apprenticeship, bonds, contracts, or agreements made in the United Kingdom relating to the service in the Colonies or the Queen's possessions abroad of any artificer, clerk, domestic servant, handicraftsman, mechanic, gardener, servant in husbandry, or labourer.

Wills and testamentary instruments and, in Scotland, dispositions *mortis causâ*.

Replevin bonds in Ireland.

Instruments made by, to or with the Commissioners of Works for the purposes of the Act 15 and 16 Vict., c. 28.

No instruments, so far as I know, are invalid by reason of not being properly stamped at the time of signature except bills of exchange and promissory notes, bills of lading, marine policies and proxy papers.

In general instruments which are unstamped or insufficiently stamped can have the proper stamp affixed at the Inland Revenue Office after execution, and most of them at any time after execution.

In respect of some of the most important sorts of instruments,\* sec. 15 of the Stamp Act, 1891, enables them to be stamped at the Inland Revenue Office at any time within 30 days after the first execution, or, if that has taken place abroad, within 30 days after the instrument was first received in the United Kingdom.

If there is any doubt as to the duty which the instrument ought to bear, the opinion of the Commissioners of Inland Revenue may be required, and then the duty must be paid within 14 days after notice of their assessment.

If the stamping is neglected till after these respective times have elapsed, the stamp is only to be affixed on payment of a penalty of £10 and the duty, and, if the latter exceeds £10, interest at 5 per cent. thereon. The Commissioners, however, may, at any time within three months of the first execution, remit or mitigate the penalty.

The dangers attending neglect to stamp, or to sufficiently stamp, an instrument, are the penalty for not stamping (which is seldom inflicted, because the defect is known to few) and the exclusion of the instrument when tendered in evidence in a civil proceeding.

But, where the instrument is one which may lawfully be stamped after it has been executed, this exclusion can be got over by paying to the officer of the Court, the arbitrator or referee, as the case may be, the unpaid

\* The section applies to--

Bonds, covenants and instruments of every kind for securing the payment at stated periods of moneys other than interest on a sum already secured, or rent.

Conveyances on sale and leases.

Mortgages, bonds, debentures, &c., to secure the payment of money, and transfers or reconveyances or releases of such securities.

Settlements.

duty (with interest if it is over £10), the penalty, and a fee of £1. The document is then admitted, and can be stamped afterwards on its production to the Commissioners together with a receipt for the money. (*Stamp Act, 1892, s. 14.*)

In criminal cases all documents are admissible without a stamp or with an insufficient stamp. (*Ibid.*)

If you have to prepare a document and the paper on which you write does not already bear the proper stamp, take it to the Inland Revenue Office at Somerset House, where the proper stamp will be affixed, or take it to the Stamp Office in your district.

There follows a statement of the stamp duties chargeable on the several kinds of instruments given in this book.

ADHESIVE STAMPS. See end of chapter.

*s. d.*

#### AFFIDAVIT OR STATUTORY DECLARATION

Under the Statutory Declarations Act, 1835 (5 and 6

W. 4, c. 62) . . . . . 2 6

#### EXEMPTIONS.

Affidavit to be filed or used in any court or before any judge or officer of the court.

Affidavit or declaration required by the Commissioners of any Public Board of Revenue, or required by law and made before any J.P.

The like required of the Bank of England or of Ireland to facilitate the transfer of stock.

The like relating to the loss or mutilation of any bank note or bank post bill.

Declaration required in order to a marriage without license.

Declaration forming part of an application for a patent for an invention.

#### AGREEMENTS.

An agreement or memorandum of agreement under hand only (or, in Scotland, without a clause of registration), if not otherwise specifically charged with any duty, bears the duty of 6d.,\* which may be paid by

\* By sec. 23 of the Act of 1891 this duty is all that is required for an instrument (not being a bill or note) given on depositing a share warrant, stock certificate to bearer, or any security transferable by delivery, as security for any loan.

The same duty also suffices for any such instrument which is given to make redeemable or to qualify a duly stamped transfer of any registered stock or marketable security intended as a security.

And the release or discharge when the loan is paid off is not chargeable with *ad valorem* duty.

means of an adhesive stamp, to be cancelled by the person who first signs.

Whether the instrument is only evidence of a contract or is itself obligatory, makes no difference.

By s. 75 of the Stamp Act, 1891, an agreement for a lease for not more than 35 years, or for an indefinite term, is to be charged duty as an actual lease (see LEASE), and any lease afterwards made in pursuance of the agreement will only bear a 6d. stamp.

Under s. 86 of the Act, certain agreements bear duty as mortgages. See MORTGAGE.

#### EXEMPTIONS.

The chief of these are :

Agreement or memorandum the matter whereof is not of the value of £5.

Agreement or memorandum for the hire of any labourer, artificer, manufacturer, or *menial servant* [observe : tutors and governesses are not within this exception].

Agreement letter, or memorandum relating to the sale of any goods, wares, or merchandise.

Agreement between a captain and sailors for wages on a coasting voyage from port to port in the United Kingdom.

Agreement between landlord and tenant under s. 8 (6) or s. 20 (2) of the Land Law (Ireland) Act, 1881.

Mere acknowledgments, such as an I.O.U. and some others contained in Class III, are of course not agreements.

#### APPRAISEMENTS.

Appraisement or valuation of any property or of dilapidations, repairs, materials and labour, or any artificer's work :

			£	s.	d.
Not exceeding £5	.	.	0	0	3
Exceeding £5 and not exceeding £10	.	.	0	0	6
„ £10	„	£20	0	1	0
„ £20	„	£30	0	1	6
„ £30	„	£40	0	2	0
„ £40	„	£50	0	2	6
„ £50	„	£100	0	5	0
„ £100	„	£200	0	10	0
„ £200	„	£500	0	15	0
„ £500	.	.	1	0	0

#### EXEMPTIONS.

Appraisement or valuation made for the information of one party only, and not obligatory between parties.

The like made under order of a Court of Admiralty, Vice-Admiralty, &c.

The like made for legacy or succession duty.

The appraiser is within 14 days to write his appraisement on stamped material, and not till then disclose the amount. Penalty £50.

The person who receives or pays for the appraisement without its being written out and stamped forfeits £20.

### APPRENTICESHIP.

	£	s.	d.
Instrument of apprenticeship . . . . .	0	2	6

This includes every writing relating to the service or tuition of any apprentice, clerk, or servant placed with any master to learn any profession, trade, or employment, except articles of clerkship to a lawyer. (Stamp Act, 1891, s. 25.) The absence of a premium makes no difference. —

### EXEMPTIONS.

Public charity and parish apprenticeships.

Apprenticeships in Ireland when the premium does not exceed £10. •

### ASSIGNMENT.

By way of security, or assignment of any security. See MORTGAGE, etc.

Upon a sale or otherwise. See CONVEYANCE.

### AWARD.

Where an amount or value is the matter in dispute.

	£	s.	d.
Where no amount is awarded or the amount or value awarded does not exceed £5 . . . . .	0	0	3
Where the amount or value awarded—			
Exceeds £5 and does not exceed £10 . . . . .	0	0	6
„ £10 „ „ £20 . . . . .	0	1	0
„ £20 „ „ £30 . . . . .	0	1	6
„ £30 „ „ £40 . . . . .	0	2	0
„ £40 „ „ £50 . . . . .	0	2	6
„ £50 „ „ £100 . . . . .	0	5	0
„ £100 „ „ £200 . . . . .	0	10	0
„ £200 „ „ £500 . . . . .	0	15	0
„ £500 „ „ £750 . . . . .	1	0	0
„ £750 „ „ £1000 . . . . .	1	5	0
„ £1000 . . . . .	1	15	0
In any other case . . . . .	1	15	0

### BILL OF EXCHANGE and PROMISSORY NOTE.

The duties on these instruments are given in Class I.

### OF SALE.

Absolute. See CONVEYANCE ON SALE.

By way of security. See MORTGAGE, etc.



Before a copy is filed for registration, the original duly stamped must be produced to the proper officer. (*Stamp Act*, 1891, s. 41.)

### BOND.

For securing the payment or repayment of any sum of money on the transfer or re-transfer of stock. See MORTGAGE, etc.

The money bonds given in Class II come under this head.

A Bond accompanying the deposit of title-deeds by way of security, or making redeemable any disposition apparently absolute but intended as a security, bears duty as a MORTGAGE. (*Stamp Act*, 1891, s. 86.)

There are several other kinds of bonds on which duties are imposed, such as bonds to secure annuities, bonds required for the Customs or Inland Revenue and administration bonds. These, with the exemptions from duty, need not be mentioned here. •

### CHEQUE.

(See BILL OF EXCHANGE and Class I.)

### CONTRACT NOTE,

*i.e.* a note sent by a broker or agent to his principal advising him of the sale or purchase of any stock or marketable security, and which (if the value is over £5) the broker is bound, under a penalty of £20, to make and transmit to his principal.

	s.	d.
Where the stock, etc., is of the value of £5 and under		
£100 . . . . .	0	1
£100 and upwards . . . . .	0	6

Where the note comprises more than one sort of stock, &c., it is to be deemed a separate note in respect of each sort.

Under s. 52 of the Stamp Act, 1891, the penny duty may be denoted by an adhesive stamp, and the duty of 6d. must be so denoted, and, in the latter case, the stamp or stamps must be such as are "appropriated to a contract note," which means shown on the face to be meant for one. Every adhesive stamp is to be cancelled by the person by whom the note is executed.

If the contract note of a sale over £5 in value is not duly stamped, the broker earns no commission. The sixpenny duty may be added to the commission.

## APPENDIX.

\*CONVEYANCE or TRANSFER on Sale of any property except Bank of England Stock and certain colonial stocks.

				£	s.	d.
Where the amount or value of the consideration for the sale does not exceed £5				0	0	6
Exceeds	£5 and does not exceed	£10	.	0	1	0
"	£10	"	"	0	1	6
"	£15	"	"	0	2	0
"	£20	"	"	0	2	6
"	£25	"	"	0	5	0
"	£50	"	"	0	7	6
"	£75	"	"	0	10	0
"	£100	"	"	0	12	6
"	£125	"	"	0	15	0
"	£150	"	"	0	17	6
"	£175	"	"	1	0	0
"	£200	"	"	1	2	6
"	£225	"	"	1	5	0
"	£250	"	"	1	7	6
"	£275	"	"	1	10	0
"	£300, for every £50 and also for every fractional part of £50	.	.	0	5	0

By s. 59 of the Stamp Act, 1891, the above-mentioned duties are chargeable on any AGREEMENT under seal or under hand only (or in Scotland with or without a clause of registration) for the sale of any equitable estate or interest† in *any* property whatsoever or for the sale of any estate or interest in any property except land, or property locally situate out of the United Kingdom, or goods, wares and merchandise, or stock or marketable security, or any ship or vessel, etc., or part interest therein.

When the duty on the Agreement is paid, the conveyance is to be free of duty, and is to be stamped on the production of the duly-stamped Agreement.

Where the purchaser, before taking conveyance, sells

\* Duty to be paid by the vendee or transferee, (*Stamp Act, 1891, s. 15.*)

† An equitable interest is where a man has a right to property, or a share of it, but the legal possession or right to possession is in another; as where a partner dies, his executor has an equitable interest in the credits of the firm, but the surviving partner is the only person to collect them. A great number of equitable interests are excepted, the sales of which are otherwise dutiable or are exempt from duty.

again for more, his agreement is chargeable with *ad valorem* duty on the excess, and in any other case must bear the fixed duty of 10s., if a deed, or of 6d., if under hand only. And, for the purpose of enforcing performance or other remedy, the stamp of 10s. or of 6d., as the case may be, will suffice. (*Stamp Act, 1891, s. 59.*)

### COPY or EXTRACT.

£ s. d.

Attested or in any manner authenticated, of or from an instrument chargeable with duty, or a will or codicil, probate, letters of administration, public registers (except of births, baptisms, marriages, deaths, or burials), and the records of any Court . 0 1 0  
 But if the instrument copied etc. bears less than a shilling, the copy etc. is to bear the same duty as the instrument.

### DECLARATION.

under the Statutory Declarations Act, 1835 (see Affidavit) . . . . . 0 2 6

### DECLARATION OF TRUST.

by a writing which is not a will or an instrument chargeable with *ad valorem* duty as a settlement . 0 10 0

### DEED.

of any kind not specially provided for . . . 0 10 0

### DEPOSIT.

By sec. 23 of the Stamp Act, 1891, every INSTRUMENT UNDER HAND ONLY (not being a bill or note) given on the occasion of the deposit of a share-warrant, or stock certificate to bearer, or foreign or colonial share certificate, or any security for money transferable by delivery, by way of security for any loan, is to be deemed an agreement and is to bear a 6d. stamp.

Where any registered stock or marketable security is transferred by way of security, any instrument such as above mentioned explaining the transfer to be for security and making it redeemable, bears the duty of 6d. only.

A release or discharge of any such instrument is not to be charged with any *ad valorem* duty.

But a DEED operating as a mortgage of any stock or marketable security is chargeable with duty as a mortgage.

See EQUITABLE MORTGAGE.

**\*EQUITABLE MORTGAGE.**

£ s. d.

Agreement or memorandum *under hand only* relating to the deposit of any instrument of title of *any* property (other than stock or marketable security) or creating a charge on such property

For every £100 and fractional part of the sum secured . . . . . 0 1 0

Where the total amount which may be at any time secured is unlimited, and a new advance† is made beyond what the stamp covers, a new stamp must be affixed proportioned to the new advance. (*Stamp Act*, 1891, s. 88 [2].)

The duty is to be borne by the mortgagee.

**INSURANCE.**

It is not necessary to give the stamps on the several kinds of Policies, none of which are included among the precedents in this book.

What it is important to say, however, under this head is that, where a security is given for future advances, or for an account current, no money to be advanced for the insurance against fire of any property comprised in the security, or for keeping up a life policy comprised in the security, or for effecting a new policy in lieu thereof, or for the renewal of any grant or lease of property comprised in the security, upon the dropping of a life, is to be reckoned as part of the sum secured so as to require additional *ad valorem* duty. (*Stamp Act*, 1891, s. 83 [3].)

**LEASE or TAIL.**

£ s. d.

‡(1) For any definite term not exceeding a year---

Of any dwelling-house or part of a dwelling-house at a rent not exceeding the rate of £10 per annum . . . . .

0 0 1

‡(2) For any definite term less than a year—

(a) Of any furnished dwelling-house or apartments where the rent for such term exceeds £25 . . . . .

0 2 6

(b) Of any lands, tenements, or heritable subjects except or otherwise than as aforesaid

The same duty as on a lease for a year at the rent reserved for the definite term

\* This may be effected by depositing the deeds, etc., without any memorandum, in which case there is nothing requiring a stamp.

† See under head **INSURANCE**.

‡ These duties and the duty upon a duplicate or counterpart of

(3) For any other definite term or for any indefinite term—

Of any lands, tenements, or heritable subjects—

Where the consideration or any part thereof, moving either to the lessor or to any other person, consists of any money, stock, or security :

In respect of such consideration The same duty as a conveyance on sale for the same consideration

\* Where the consideration or any part thereof is any rent :

In respect of such consideration :

If the rent, whether reserved as a yearly rent or otherwise, is at a rate or average rate—

	If the term does not exceed 35 years or is indefinite.			If the term exceeds 35 years but does not exceed 100 years.			If the term exceeds 100 years.		
	£	s.	d.	£	s.	d.	£	s.	d.
Not exceeding £5 per annum	0	0	6	0	3	0	0	6	0
Exceeding—									
£5 and not exceeding £10	0	1	0	0	6	0	0	12	0
£10 „ „ £15	0	1	6	0	9	0	0	18	0
£15 „ „ £20	0	2	0	0	12	0	1	4	0
£20 „ „ £25	0	2	6	0	15	0	1	10	0
£25 „ „ £50	0	5	0	1	10	0	3	0	0
£50 „ „ £75	0	7	6	2	5	0	4	10	0
£75 „ „ £100	0	10	0	3	0	0	6	0	0
£100, for every full sum of £50, and also for any fractional part of £50 thereof	0	5	0	1	10	0	3	0	0

any of these instruments may be denoted by an adhesive stamp which is to be cancelled by the person who first executes. Every person who executes, or prepares, or is employed in preparing any such instrument (except letters or correspondence) which is not duly stamped at or before the execution thereof incurs a penalty of £5. (*Stamp Act, 1891, s. 78.*)

\* An agreement for a lease for not more than 35 years, or for an indefinite term, is to be charged duty as an actual lease, and the lease made in pursuance of the agreement bears only 6d. (*Stamp Act, 1891, s. 75.*)

Where the consideration, or part of it, consists of produce or

	£	s.	d.
(4) Of any other kind whatsoever not hereinbefore described . . . . .	0	10	0

## MARRIAGE SETTLEMENT.

See SETTLEMENT.

**\*MORTGAGE, BOND, DEBENTURE COVENANT** (except a marketable security otherwise chargeable with duty), and **WARRANT OF ATTORNEY** to confess judgment—

	£	s.	d.
Being the only or principal or primary security (other than an equitable mortgage) for the payment or repayment of money :			
Not exceeding £10 . . . . .	0	0	3
Exceeding £10 and not exceeding £25 . . . . .	0	0	8
„ £25 „ „ £50 . . . . .	0	1	3
„ £50 „ „ £100 . . . . .	0	2	6
„ £100 „ „ £150 . . . . .	0	3	9
„ £150 „ „ £200 . . . . .	0	5	0
„ £200 „ „ £250 . . . . .	0	6	3
„ £250 „ „ £300 . . . . .	0	7	6
„ £300, for every £100 and any fractional part of £100 . . . . .	0	2	6
If the security is collateral, auxiliary, or substituted, and the principal security is duly stamped, every £100 or fractional part of £100 bears . . . . .	0	0	6
A security for the transfer or re-transfer of any stock is to be charged on the value of the stock.			
If the security is an equitable mortgage, it bears for every £100, and fractional part, secured . . . . .	0	1	0
†TRANSFER or ASSIGNMENT of any mortgage, etc., above mentioned (not being a marketable security), or of any money or stock secured thereby or by any Warrant of Attorney, or any judgment :			
For every £100, and fractional part thereof, of the amount transferred or assigned . . . . .	0	0	6

goods the stamp duty goes on the value of such produce or goods, and the value should be stated. (*Ibid.*, s. 76.)

Reservation of rent in the nature of a penalty does not increase the duty. (*Ibid.* s. 76.)

Where the lessee bargains to make improvements, the duty is not increased. (*Ibid.*, s. 76.)

A lease for a life, or lives not exceeding three, is not to be charged with more than 3s. (*Ibid.* s. 76.)

\* Duty to be paid by the mortgagor or obligee.

† Duty to be paid by the transferee. (*Stamp Act*, 1891, s. 15.)

And where any further money is added to the money secured . . . . .	The same duty as a principal security for such for the same
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£ s. d.

\*RECONVEYANCE, RELEASE, etc., of any of the above-mentioned securities :

For every £100 and fractional part thereof of the amount or value at any time secured . . . . .	0 0 6
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MORTGAGE OF STOCK or Marketable Security under hand only. See AGREEMENT and note.

### POWER OF ATTORNEY.

	£	s.	d.
†In general . . . . .	0	10	0
By petty officer, seaman or marine or his executor, for receiving prize money or wages . . . . .	0	1	0
For receiving dividends or interest of stock (one payment only) . . . . .	0	1	0
For more than one payment . . . . .	0	5	0
For receiving money or bills or notes for money not exceeding £20, or periodical payments not exceeding the annual sum of £10 ( <i>not before charged</i> ) . . . . .	0	5	0
For the sale of Government stock not exceeding £20 . . . . .	0	5	0
Ditto, exceeding £20 . . . . .	0	10	0
For Voting at a Meeting see PROXY PAPER.			

### PROXY PAPERS.

These are powers of attorney, but when they are only to authorize one or more proxies to vote at *one meeting* at which votes may be given by proxy, the duty is only . . . . . 0 0 1

The instrument must specify the day of the meeting and is available for adjournments thereof, but for no other meeting. It may be stamped with an adhesive stamp, to be cancelled by the person who executes it, and cannot be stamped after execution. If it is unstamped, votes given under it are void, and the person

\* Duty to be paid by the person redeeming. (*Ibid.*) \*

† The exemptions relate to dividends on Government Stock of less than £3 a year; proxies filed in the Court of Probate or any ecclesiastical court; voting for East India directors and orders under hand only from the owner of stock in a company to an officer thereof or to a banker directing payment of the dividends or interest to any person named in the order.

who executes it or who tenders a vote under it incurs a penalty of £50.

If the proxy paper is for more than one meeting, or does not correspond to the above description, it must carry the 10s. stamp as a power of attorney.

### RECEIPT

	£	s.	d.
given for or upon the payment of money amounting to £2 or upwards . . . . .	0	0	1

The word "receipt" includes any note or memorandum acknowledging money amounting to £2 or more to have been received or deposited, or any bill, cheque, or note for such an amount, and whether the receipt is signed with the name of any person or not. (*Stamp Act, 1891, s. 101.*)

The duty may be denoted by an adhesive stamp, to be cancelled by the person by whom the receipt is given before delivering it out of his hands. (*Ibid.*, s. 102.)

A receipt given unstamped may be stamped with an impressed stamp within 14 days on payment of the duty and £5, and after 14 days and within a month on payment of the duty and £10; but it cannot otherwise be stamped with an impressed stamp.

The duty is to be borne by the person who gives the receipt. (*Ibid.*, s. 103.)

For exceptions see Class III, s. 7, n.

### RECONVEYANCE.

See MORTGAGE.

### RELEASE.

	£	s.	d.
On sale, same as CONVEYANCE.			
Of security, see under head MORTGAGE.			
In every other case . . . . .	0	10	0

### SETTLEMENT.

Whether voluntary or not (other than for a *bonâ fide* pecuniary consideration) for settling or agreeing to settle any definite and certain principal sum of money (whether charged or chargeable on lands or not, or to be laid out in buying lands or not), or any definite and certain amount of stock, or any security:"

For every £100 or fractional part of £100 . . . . .	0	5	0
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The duty is to be paid by the settlor (*Stamp Act, 1891, s. 15.*)



## SURRENDER

	£	s.	d.
of any kind not charged as a conveyance on sale or mortgage . . . . .	0	10	0
A surrender of a lease will therefore bear this duty.			

## TRANSFER.

See CONVEYANCE.

## VALUATION.

See APPRAISEMENT.

## VOTING PAPER.

See PROXY PAPERS.

## ADHESIVE STAMPS AND THEIR CANCELLATION.

Any stamp duties of an amount not exceeding 2s. 6d. which may lawfully be denoted by adhesive stamps "not appropriated by any word or words on the face of them to any particular description of instrument," and any postage duties of the like amount may be denoted by the same adhesive stamps. (*Stamp Act, 1891, s. 7.*)

Where adhesive stamps are allowed to be used, the instrument is not to be deemed duly stamped with an adhesive stamp unless it is cancelled by the person required by law to do so. And where two or more adhesive stamps are used, that person must cancel every stamp in the mode required. (*Ibid.*, s. 8.)

The mode of cancellation is by the person, whose duty it is to cancel, "writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing," or the law will be satisfied if he "otherwise effectively cancels the stamp" (or stamps) "and renders the same incapable of being used for any other instrument or for any postal purpose." (*Ibid.*, s. 9.)

If it is "otherwise proved that the stamp appearing on the instrument was affixed thereto at the proper date," the instrument is to be deemed duly stamped, but the person whose duty it was to cancel the stamp will be liable to the penalty for omitting to do so, which is £10. (*Ibid.*, s. 9.)

# INDEX

## TO ALL BUT THE FORMS.\*

*For Table of Forms, see the beginning.]*

The Roman numerals refer to the Classes into which the book is divided; but, when following the word "form" or "forms," the Roman numerals refer to the numbers of the forms in the Class mentioned. The Arabic numerals refer to the sections into which the body of the book is divided and which are marked in Arabic figures at the beginnings of paragraphs.

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